# APPENDIX

IN THE

# Supreme Court of the United States

**October Term, 1978**

**No. 77-1427**

THE NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

*Petitioners,*

—v.—

CARL BEAZER, *et al.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

**PETITION FOR CERTIORARI FILED APRIL 6, 1978**
**CERTIORARI GRANTED JUNE 26, 1978**

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NOTE: Relevant opinions, judgments and orders are to be found in the appendix of the Petition for Writ of Certiorari, as follows:

## Docket Entries

### UNITED STATES DISTRICT COURT

72 Civ. 5307

| DATE | PROCEEDINGS |
|---|---|
| 12-15-72 | Filed complaint & issued summons. |
| 1-10-73 | Filed stip & order that time of deft's as indicated to answer the, complaint is ext. to 2-9-73. So ordered. Griesa, J. |
| 2-13-73 | Filed pltff's affidavit & notice of motion ret. before Griesa, J. on 2-21-73 for class suit determination. |
| 2-13-73 | Filed pltff's memorandum of law in support of their motion ret. 2-21-73. |
| 2-23-73 | Filed stip & order adj. pltff's motion for a class action ret, 2-21-73, to 4-10-73. So ordered. Griesa, J. |
| 2-23-73 | Filed stip & order that pltff's motion for a class action & deft's, motion for dismissal & summary judg. ret. 2-27-73 adj. to 4-10-73. So ordered. Griesa, J. |
| 2-26-73 | Filed Summons with Marshal's returns: Served: New York City Transit Authority on 12-20-72<br>Wilbur B. McLaren on 12-20-72<br>Mortimer Gleeson on 12-21-72<br>Justine N. Feldman on 12-21-72<br>Donald H. Elliott on 12-21-72<br>Frederic B. Powers on 12-30-72<br>William L. Butcher on 1-2-73<br>Eben W. Pyne on 1-6-73<br>Harold L. Fisher on 1-9-73 |

*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| | Leonard Braun on 1-15-73 |
| | Department of Personnel of the City of New York on 1-18-73 |
| | Civil Service Commission of the City of New York on 1-18-73 |
| | David Stadtmauer on 1-30-73 |
| | William A. Shea on 2-6-73 |
| | Louis Lanzetta on 2-8-73 |
| | Harry I. Bronstein on 2-8-73 |
| | William J. Ronan on 2-8-73 |
| | Lawrence R. Bailey on 2-12-73 |
| | James W. Smith on 2-13-73 |
| 3-21-73 | Filed Deft's Answer to the complaint, |
| 5-3-73 | Filed Memo-End. on motion dtd 2-13-73. Motion granted. The prerequisites of treatment under FRCP 23(b)(2) are met, as far as the present record shows. There is no opposition to the motion. Griesa, J. (mn) |
| 5-3-73 | Filed deft N.Y.C. Transit Authority etc. notice of motion ret: 2-27-73 re: dismissal etc. |
| 5-3-73 | Filed Memo-End. on motion to dismiss dtd this date. This motion to dismiss the complaint and for summary judgment is denied. There are sufficient allegations in the complaint to indicate the existence of factual issues for trial, at least as far as the present record shows. Griesa, J. (mn) |
| 5-3-73 | Filed Order To Show Cause for leave to appear amicus curiae ret: 4-18-73. |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 5-3-73 | Filed Memo-End. on order to show cause. Motion granted. Griesa, J. (mn) |
| 5-31-73 | Filed copy of deft's. NYC Transit Authority, et al Answer to complaint. |
| 6-22-73 | Filed pltffs interrogatories addressed to certain defts, and request for the production of documents. |
| 6-29-73 | Pltffs Interrogatories addressed to Lawrence R. Bailey. |
| 6-29-73 | Filed pltffs Interrogatories addressed to deft. Leonard Braun & request for documents. |
| 6-29-73 | Filed pltffs Interrogatories addressed to deft. William A. Shea & request for documents. |
| 6-29-73 | Filed pltffs Interrogatories addressed to deft. Donald H. Elliott & request for documents. |
| 6-29-73 | Filed pltffs Interrogatories addressed to deft. M. Gleeson & request for documents. |
| 6-29-73 | Filed pltffs request for production of documents & Interrogatories addressed to William L. Butcher. |
| 6-29-73 | Filed pltffs Interrogatories addressed to deft. Frederic B. Powers & request for documents. |
| 6-29-73 | Filed Pltffs Interrogatories addressed to the deft. J.N. Feldman & request for documents. |
| 6-29-73 | Filed pltffs Interrogatories addressed to the deft. E.W. Pyne & request for the production of documents. |

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| DATE | PROCEEDINGS |
|---|---|
| 6-29-73 | Filed pltffs Interrogatories addressed to the deft. W.J. Ronan & request for documents. |
| 7-2-73 | Filed pltffs Interrogatories addressed to the deft. H.I. Bronstein & David Stad and James W. Smith & request for the production of documents. |
| 7-5-73 | Filed affidavit of service by John Maldonado for the pltff. |
| 7-5-73 | Filed defts affidavit of service by Elizabeth B. DuBois. |
| 7-9-73 | Filed change of address of Legal Action Center. (See front Sheet) |
| 9-25-73 | Filed affdvt. of Gilbert T. Dunn in opposition to pltffs' motion to amend & supplement pleadings, to add a party pltff. |
| 9-25-73 | Filed memorandum in support of pltffs' motion to amend & supplement pleadings. |
| 9-25-73 | Filed pltffs' affdvt. & notice of motion to amend pleadings and to add party pltff-ret. 7-23-73. |
| 9-25-73 | Filed memo endorsed on motion filed 9-25-73—Motion to amend pleadings & to add party pltff. granted—So ordered—Griesa, J.—mailed notice. |
| 10-26-73 | Filed defts' answers to pltffs' interrogs. |
| 10-26-73 | Filed defts' interrogs. and request for production of documents. |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 10-30-73 | Filed affdvt. of Eric D. Balber in support of pltffs' motion to amend pleadings. |
| 10-30-73 | Filed memorandum in support of pltffs' motion to amend the pleadings. |
| 10-30-73 | Filed memo endorsed on affdvt. filed 10-30-73—There being no opposition, the motion is granted. Pltffs. are to file and serve their amended complaint within ten days—So ordered—Griesa, J.—m.n. |
| 10-31-73 | Filed pltff's affdvt. & show cause order for a temporary restraining order and a preliminary injunction—ret. 10-29-73—Griesa, J. |
| 10-31-73 | Filed memo endorsed on show cause order filed 10-31-73—Action on motion deferred as per minutes of hearing 10-29-73—Smith withdraws application insofar as directed to preventing hearing of 10-31-73 and obtaining immediate reinstatement of back pay. Smith is to be given one week's notice before any dismissal goes into effect.—So ordered—Griesa, J.—mailed notice. |
| 11-9-73 | Filed defts' answers to interrogs. |
| 11-9-73 | Filed order that the Beth Israel Methadone Maintenance Treatment Program, et al produce at the offices of counsel for pltffs. all methadone maintenance treatment program or other medical records in their custody—said photocopies are to be conveyed within 3 business days of the receipt of said records by pltffs' counsel |

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| DATE | PROCEEDINGS |
|---|---|
| | unless objections to their conveyance have been submitted to the Court within that time period —Griesa, J.—mailed notice. |
| 11-20-73 | Filed transcript of record of proceedings of 10-29-73—Griesa, J. |
| 11-27-73 | Filed deft's (Ronan) answers to interrogs. |
| 11-30-73 | Filed defts. Answers to pltfs interrogatories, First Supplement. |
| 11-30-73 | Filed Answers of Defts. N.Y.C. Transit Authority, et al to amended complaint. |
| 12-5-73 | Filed defts. N.Y.C. Transit Authority, notice of deposition of U.S. Veterans Administration. Methadone Maintenance Program. |
| 12-5-73 | Filed defts. N.Y.C. Transit Authority, notice of deposition of Methadone Maintenance Treatment Center. |
| 12-5-73 | Filed defts. N.Y.C. Transit Authority, notice of deposition of Beth Israel Methadone Maintenance Treatment Program. |
| 12-27-73 | Filed notice of deposition and request for production of documents by pltf. Testimony of Louis Lanzetta. |
| 12-27-73 | Filed pltf. notice of deposition and request for production of documents, of William J. Ronan. |
| 12-27-73 | Filed pltf. notice of deposition of Justin Feldman; and request for production of documents. |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 12-27-73 | Filed pltf. notice of deposition of Lawrence Bailey, and request for production of documents. |
| 12-27-73 | Filed pltf. notice of deposition of New York City Transit, and request for production of documents. |
| 12-27-73 | Filed pltf. notice of deposition of Wilbur McLaren, and request for production of documents. |
| 12-27-73 | Filed pltf. notice of deposition of Leonard Braun, and request for production of documents. |
| 12-27-73 | Filed affdvt. of service of notice of deposition. |
| 1-4-74 | Filed pltf. notice of deposition of William Butcher, and request for production of documents. |
| 1-14-74 | Filed order amending order dated 11-8-73 so as to include any and all records in the custody of Morris J. Bernstein Institute and any other hospital, institution or methadone maintenance treatment program re: Carl A. Beazer, Francisco Diaz, Jose R. Reyes, Malcolm Frasier or Vannie A. Smith aka Alfred E. Costello—Griesa, J.—mailed notice. |
| 1-18-74 | Filed pltffs' affdvt. & show cause order re: transcripts of all depositions, etc. ret. 1-21-74, at 1:00 P.M. |
| 1-18-74 | Filed stip. & order that all methadone maintenance treatment program or other medical records, may be used solely for the purpose of |

| DATE | PROCEEDINGS |
|---|---|
| | defending the action—that said records are otherwise absolutely confidential and may not, be disclosed by defts. to any persons not parties to the action—Griesa, J. |
| 1-22-74 | Filed order that the depositions to be taken by defts. may not be used for any criminal investigation or prosecution of said persons; that the transcripts of said depositions are to be sealed except and until otherwise ordered by this Court; and that the only persons to be present at said depositions are to be parties to this action, their counsel, and stenographic personnel—Griesa, J.—m.n. |
| 1-25-74 | Filed affdvt. of service by an individual of show cause order. |
| 2-5-74 | Filed affdvt. of Malcolm Frasier re: answers to interrogs. |
| 3-15-74 | Filed pltffs' notice of taking deposition of Harold L. Trigg, M.C. & request for productions of documents. |
| 3-25-74 | Filed pltffs' notice of taking deposition of Harold Shannon. |
| 3-28-74 | Filed pltffs' notice to take deposition. |
| 4-3-74 | Filed pltffs' affdvt. & show cause order directing Harold L. Trigg to answer oral interrogs.—ret. 4-4-74. |
| 4-3-74 | Filed pltffs' memorandum of law in support of motion. |



| DATE | PROCEEDINGS |
|---|---|
| 4-5-74 | Filed memo endorsed on pltffs' show cause order filed 4-3-74—Motion granted in part and denied in part. See minutes of 4-4-74—So ordered —Griesa, J.—m.n. |
| 5-8-74 | Filed pltffs notice to take deposition of Wm. J. Ronan, & request for production of documents. |
| 5-8-74 | Filed pltffs notice to take deposition of L. R. Bailey, & request for production of documents. |
| 5-8-74 | Filed pltffs notice to take deposition of Leonard Braun, & request for production of documents. |
| 5-8-74 | Filed pltffs notice to take deposition of Justin N. Feldman, & request for production of documents. |
| 5-8-74 | Filed notice to take deposition of Wm. L. Butcher, & request for production of documents. |
| 1-28-74 | Filed transcript of record of proceedings, dated Nov 16, 1973 |
| 7-8-74 | Filed transcript of record of proceedings, dated Apr 4-74. |
| 6-26-74 | Filed pltff's notice of taking deposition upon oral examination & request for production of documents. |
| 7-10-74 | Filed pltffs' supplemental interrogs. |
| 7-18-74 | Filed pltffs request for defts to answer interrogs, & for production of documents. |
| 8-16-74 | Filed deft (Transit) answers to interrogs & request for production of documents. |

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|---|---|
| 9-10-74 | Filed sealed envelope of papers pursuant to Order of 11-8-73—Griesa, J. (Placed in Cashier's vault) |
| 9-15-74 | Filed pltffs response to defts proposed findings of fact & Counter proposals of defts. |
| 10-17-74 | Filed pltffs pre-trial brief on the law. |
| 10-17-74 | Filed affdvt of service by Elizabeth B. DuBois. |
| 10-17-74 | Filed pltffs compilation of agreed to & contested facts. |
| 10-18-74 | Filed defts (Transit) pretrial memorandum. |
| 10-18-74 | Filed defts (Transit) proposed findings of fact. |
| 10-22-74 | Filed deposition of Carl A. Beazer of 1-22-74. |
| 10-22-74 | Filed defts deposition of Francisco Diaz of 2-4-74. |
| 10-22-74 | Filed defts deposition of Jose Ramon Reyes of 1-29-74. |
| 10-22-74 | Filed defts deposition of Malcolm Kenneth Frazier of 3-12-74. |
| 11-18-74 | Filed transcript of record of proceedings, dated Oct 22, 24, 25, 29—1974 |
| 11-18-74 | Filed transcript of record of proceedings, dated Oct 30—1974 |
| 12-3-74 | Filed transcript of record of proceedings, dated Nov 17, 1974 |
| 12-17-74 | Filed pltffs memo in response to deft (Transit Auth.) motion to dismiss. |



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|---|---|
| 1-2-75 | Filed Order determining that Drs. Dole, Etzioni, Gollance, Kreek, Lukoff, Trigg, Primm, Rosenthal & Higgins, are to appear & testify at the trial of this action, on date & time specified—Griesa, J. |
| 1-29-75 | Filed Order directing Dr. Judianne Densen-Gerber to appear & testify at the trial in this action on 1-28-75 at 2:00 P.M. m/n Griesa, J. |
| 2-19-75 | Filed pltffs affdvt of service of filing of memorandum relating to Transit Auth. tour on the Court. |
| 2-19-75 | Filed pltffs memorandum relating to Transit Authority Tour conducted 11-13-74. |
| 2-21-75 | Filed pltffs memo relating to federal regulation of the confidentiality of methadone maintenance treatment program records. |
| 2-21-75 | Filed pltffs memo relating to the structure of the TA employment system, etc. |
| 5-12-75 | Filed transcript of record of proceedings, dated Oct. 24, 1974 |
| 5-12-75 | Filed transcript of record of proceedings, dated Oct. 29, 1974 |
| 5-12-75 | Filed transcript of record of proceedings, dated Jan 12, 1975 |
| 8-6-75 | Filed Opinion #42931 & Order. This class action against the TA, NYC Civil Service Comm., & the NYC Personnel Dep't, & certain officials thereof, challenges the blanket exclusion from |

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any form of employment in the NYC subway & bus systems, all former heroin addicts participating in methadone maintenance programs regardless of the individual merits of the employee or applicant, & against those who have successfully concluded participation. The Amended complt alleges that this policy violates due process & equal protection clauses of the Fourteenth Amendment & Federal Civil Rights Statutes. Pltffs also allege the exclusionary policy affecting blacks & hispanics, resulting in violation of the Civil Rights Act of 1964, & they seek declaratory & injunctive relief on behalf of the class, & certain monetary on behalf of the named pltffs. For the many reasons indicated in this opinion, I hold that the TA's blanket ban against the employment of all present & past methadone maintained persons in any position in the TA, is a violation of the due process & equal protection clauses of the Fourteenth Amendment. I wish to stress certain things not compelled by my holding. The TA is not required to hire any past or present methadone maintained person where there is a legitimate reason to question the persons ability or competence, etc., as indicated. As to the NYC Civil Service Comm., or the NYC Personnel Dep't officials connected with these two entities, there is no showing of any wrongdoing or need for relief. The TA will be directed to reexamine the employability



DATE PROCEEDINGS

of each of the four named pltffs & submit its conclusions to the Court. The Court will then determine whether any named pltff should be reinstated or hired & what rights to back pay there are, if any. In re to the class, pltffs are directed to submit a proposed permanent injunction based on the principles in this opinion, & the TA defts are to review & comment upon pltffs proposal. The injunction should contain certain basic directions & guidelines. Thereafter, the Court will retain jurisdiction for a period of time to implement the injunction—Griesa, J m/n

9-19-75 Filed transcript of record of proceedings, dated Oct 25, 1974

9-19-75 Filed transcript of record of proceedings, dated Jan. 7, 9, 10, 75

10-9-75 Filed Pltffs' Notice of Motion for Counsel Fees & Costs—ret 10-23-75—at 10 AM

10-9-75 Filed Pltffs' Memo in support of motion for costs.

11-28-75 Filed pltffs' reply memorandum in support of their motion for costs and attys' fees.

11-28-75 Filed pltffs' memorandum in support of their proposed order and in opposition to deft. Transit Authority's proposed counter-Order.

5-6-76 Filed supplemental Opinion #44357—for the reasons stated, in a Title VII case, atty's fees are

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| DATE | PROCEEDINGS |
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| | normally awarded to the prevailing party, unless there are exceptional circumstances indicating that such an award should not be made. No such circumstance exist in the present case. Pltffs. are clearly entitled to a fee award. A hearing will be held on the amount of the award. So ordered—Griesa, J. (m/n) |
| 5-13-76 | Filed Permanent Injunction and Judgment—that defts. N.Y. City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, their members, directors, etc. are permanently enjoined and restrained as indicated and that the action be dismissed as to Civil Service Commission of the City of N.Y. and the Personnel Dept. of the City of N.Y., Harry I. Bronstein, Chairman of the Civil Service Commission and Director of the Personnel Dept., and David Stadtmauer and James W. Smith, members of the Civil Service Commission, and their successors in office without costs. Griesa, J. Judgment entered—5-20-76 Clerk (m/n) |
| 6-15-76 | Filed Undertaking for costs on appeal in the sum of $250.00—Fidelity and Deposit Company of Maryland. |
| 6-15-76 | Filed Notice of Appeal of defts New York City Transit Authority, The Manhattan & Bronx Surface Transit Operating Authority & their member directors, etc. to USCA from the Judgment entered on 5-20-76 of DC Notices mailed to: Elizabeth B. DuBois, atty for pltffs, 271 |



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| DATE | PROCEEDINGS |
|---|---|
| | Madison Ave. NYC 10016 and W. Bernard Richland, Atty. for Civil Service Commission, City of N.Y., Corporation Counsel, Municipal Bldg. NYC 10007. |
| 7-7-76 | Filed Order extending time of deft NYC transit Authority to submit written statement as to employability of pltffs Carl A. Beazer, Jose R. Reyes, Francisco Diaz and Malcolm K. Frazier —30 days to July 19, 1976. Griesa, J. |
| 7-21-76 | Filed True Copy of USCA 2nd Circuit Stip and Order that above appeal may be withdrawn without costs and without attys' fees and without prejudice, etc. as indicated. |
| 9-28-76 | Filed Pltffs. Notice of Motion to issue the annexed proposed order supplementing and modifying the permanent injunction and judgement entered on 5-20-76. |
| 9-28-76 | Filed Pltffs' Memorandum in Support of Motion to Supplement and modify the Court's Order of 5-20-76. |
| 9-28-76 | Filed Appendix "E" to the Memorandum in Support of the Motion to Supplement and Modify the Courts Order of 5-20-76. |
| 11-1-76 | Filed Pltffs Affidavit and Notice of Motion for an order declaring defts' Liability for attys' fees and to fix amt of attys' fees. Ret: 11-11-76 |
| 11-1-76 | Filed Pltffs' Memorandum in support of motion to declare defts' liability for attys' fees and to fix amt of attys' fees. |

*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 12-1-76 | Filed defts. New York City Transit Authority, the Manhattan & Bronx Surface Transit Operating Authority, and their members, etc. notice of appeal to USCA from the permanent injunction and judgment entered on 5-20-76. Copy to: Elizabeth B. DuBois, Esq., Legal Action Center of the City of N.Y.) |
| 12-9-76 | Filed pltffs' reply memorandum in support of their motion to declare defts' liability for attys' fees pursuant to the Civil Rights Attys' fees Awards Act of 1976 and to fix the amount of attys' fees. |
| 9-16-75 | Filed transcript record of proceedings dtd: 1, 27, 28, 31, 1975 & 2, 3, 7, 1976. |
| 9-16-75 | Filed transcript record of proceedings, dtd: 2-12-75 |
| 9-16-75 | Filed transcript record of proceedings dtd: Dec. 12, 16, 1974 |
| 1-12-77 | Filed amended complaint |
| 4-6-73 | Filed affidavit of Elizabeth DuBois and exhibits in opposition to deft's motion to dismiss. |
| 4-6-73 | Filed affidavit of Eleanor Holmes Norton in opposition to def'ts motion to dismiss |
| 6-29-73 | Filed pltff's interrogatories and requests for production of document |
| 1-12-77 | Filed amended complaint (class action) |
| 1-12-77 | Filed order and stipulation of authenticity of documents produced |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 1-12-77 | Filed stipulation and order waiving requirement that deposition be |
| 1-12-77 | Filed stipulation and order of authenticity of medical records. |
| 1-14-77 | Filed notice that the record on appeal has been certified and transmitted to the USCA on this day. |
| 1-28-77 | Filed Amended permanent injunction and judgment as indicated—Griesa, J. m/n |
| 2-10-77 | Filed defts. New York City Transit Authority, The Manhattan and Bronx Surface Transit Operating Authority, and their members, directors, officers, agents and employees sued herein, amended notice of appeal to USCA from the amended permanent Injunction and Judgment entered on 1-28-77. Copy mailed to: Legal Action Center of the City of N.Y., Inc. |
| 2-15-77 | Filed pltffs' notice of appeal to USCA from that part of paragraph 9 of the amended permanent injunction and judgment dismissing the claims of pltffs. Carl A. Beazer, Jose R. Reyes and Nathaniel Wright entered on 1-28-77. Copies to: Alphone E. D'Ambrose and Corporation Counsel, City of N.Y. Ent. 2-15-77. |

*Docket Entries*

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

76–7295

| DATE | PROCEEDINGS |
|---|---|
| 6-17-76 | Filed copies of docket entries and notice of appeal |
| 6-24-76 | Received docket fee |
| 6-24-76 | Stuart Riedel, Esq. filed form C, p/s |
| 6-24-76 | Stuart Riedel, Esq. filed form D |
| 6-25-76 | Court reporter filed form D |
| 6-25-76 | Filed scheduling order #1 (CAMP) PC |
| 7-13-76 | Filed order withdrawing appeal without prejudice to renewal provided such renewal is filed by 12-1-76 or thirty days following the entry of an appealable order, etc. (on consent) |
| 7-15-76 | Issued certified copy of order withdrawing appeal, etc. |
| 12-1-76 | Filed copy of docket entries and notice of appeal (NYC Trans. Auth.) |
| 12-9-76 | Filed motion to vacate the stipulation dated 7-12-76 and to reinstate appeal, appellants, p/s |
| 12-15-76 | Filed order granting appellants' motion to vacate stipulation |
| 12-29-76 | Filed scheduling order #2 (CAMP) |
| 1-14-77 | Filed record (Original papers of district court) |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 1-31-77 | Filed motion for an extension of time to file appellants' brief and appendix, p/s |
| 2-1-77 | Filed scheduling order #3 (CAMP) |
| 2-14-77 | Filed copies of docket entries and notice of appeal (Defendants) |
| 2-16-77 | Filed copies of docket entries and notice of appeal (Plaintiffs) |
| 2-22-77 | Filed motion to consolidate appeals, to enter a scheduling order, etc., and to designate defendants appellants and plaintiffs appellees for purposes of the consolidated appeal, p/s |
| 2-25-77 | Received docket fee (Plaintiffs) (& in 77-7092) |
| 2-25-77 | Mark C. Morril filed Form C, plaintiffs (& in 77-7092) |
| 2-25-77 | Mark C. Morril filed Form D, plaintiffs (& in 77-7092) |
| 2-25-77 | Filed affidavit in reply to motion to consolidate appeals, p/s (N.Y.C. Transit Authority) (& in 77-7092) |
| 2-25-77 | Filed motion for deferral of appendix, appellants, p/s (N.Y.C. Transit Authority) (& in 77-7092) |
| 2-25-77 | Filed affidavit in opposition to motion for deferral of appendix, appellees, p/s (& in 77-7092) |
| 2-25-77 | Filed motion for stay of portions of amended permanent injunction and judgment, appellants, p/s (& in 77-7092) |

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| DATE | PROCEEDINGS |
|---|---|
| 2-28-77 | Filed scheduling order #4 (CAMP) Motions to consolidate and file a deferred appendix are denied |
| 3-9-77 | Filed order extending time to file joint appendix to 3-11-77 (on consent) |
| 3-10-77 | Filed plaintiff's memorandum in opposition to motion for stay, p/s |
| 3-10-77 | Filed briefs, appellant, p/s (& in 77-7092) |
| 3-11-77 | Filed appendix, appellant, p/s (six volumes) (& in 77-7092) |
| 3-15-77 | Filed order denying motion for stay on the merits |
| 3-18-77 | Filed motion to allow plaintiffs to file separate briefs for appeals and cross-appeal, p/s |
| 3-23-77 | Filed affidavit in opposition to motion to file two briefs, appellants, p/s (& in 77-7092) |
| 3-30-77 | Filed order denying motion for leave to file separate briefs that is a brief concerning appeals of the appellant New York City Transit Authority and a brief concerning Beazer's cross-appeal (& in 77-7092) |
| 4-4-77 | Filed appellee's briefs, p/s |
| 4-18-77 | Filed motion of the U.S. to file brief amicus curiae out of time, p/s (& in 77-7092) |
| 4-18-77 | Filed motion for leave to file amicus brief in typewritten form, amicus, p/s (U.S.) (& in 77-7092) |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 4-20-77 | Filed supplemental record (Original papers of district court) (& in 77-7092) |
| 4-29-77 | Filed order granting United States of America's motions for leave to file a brief as amicus curiae out of time and for leave to file said brief in typewritten form today and printed copies thereof when printed |
| 4-29-77 | Filed typewritten briefs, amicus curiae, U.S.A., p/s |
| 4-29-77 | Filed printed briefs, amicus curiae, U.S.A., p/s |
| 5-5-77 | Filed motion of N.Y.C. Transit Authority for Alphonse E. D'Ambrose to be admitted pro hac vice, p/s |
| 5-5-77 | Filed order granting motion for leave to argue the appeal pro-hac vice (D'Ambrose) |
| 5-5-77 | Argument heard (By: Mansfield, Oakes, CJJ. Brieant, DJ) (& in 77-7092) |
| 5-18-77 | Filed second supplemental record (Original papers of district court) (& in 77-7092) |
| 6-22-77 | Judgment affirmed in part, modified and affirmed in part, reversed in part and remanded (Oakes) |
| 6-22-77 | Filed Judgment (& in 77-7092) |
| 7-7-77 | Filed itemized and verified bill of costs, appellees, p/s (& in 77-7092) |
| 7-13-77 | Filed statement of costs (& in 77-7092) |
| 7-13-77 | Issued mandate (opinion, judgment and statement of costs) (& in 77-7092) |

*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 7-18-77 | Original, supplemental and second supplemental records returned to district court (& in 77-7092) |
| 7-22-77 | Filed receipt of return of original, supplemental and second supplemental records to district court (& in 77-7092) |
| 7-26-77 | Filed motion for enlargement of time to file a petition for rehearing, p/s |
| 7-28-77 | Filed motion for an order recalling this court's mandate and staying further proceedings in the district court, p/s, appellees |
| 8-5-77 | Filed memorandum in opposition to motion to recall the mandate, p/s |
| 8-11-77 | Filed order granting leave to file petition for rehearing |
| 8-11-77 | Filed petition for rehearing and rehearing en banc, w/pfs (Transit Authority) |
| 8-11-77 | Filed order granting leave to recall the mandate and stay its reissuance pending determination of petition for rehearing |
| 8-12-77 | Issued certified copy of order recalling mandate, etc., under covering letter |
| 8-22-77 | Received recalled mandate from District Court |
| 2-1-78 | Filed order denying petition for rehearing |
| 2-1-78 | Filed order denying petition for rehearing in banc |



*Docket Entries*

| DATE | PROCEEDINGS |
|---|---|
| 2-16-78 | Filed motion for leave to stay mandate pending application to S.C. for petition for writ of certiorari, pfs (N.Y. Transit Authority) (145) |
| 2-21-78 | Filed memorandum in opposition to motion for stay of mandate, pfs |
| 3-10-78 | Filed order granting leave to stay mandate pending application to the supreme court for a writ of certiorari S.C. #77-1427 |
| 4-7-78 | Filed notice from Supreme Court of filing for petition for writ of certiorari (S.C. #77-1427) |
| 4-7-78 | Filed notice from Supreme Court of filing for petition for writ of certiorari (SC #77-1427) |
| 6-30-78 | Filed certified copy of order of Supreme Court granting petition for writ of certiorari (SC #77-1427) |

**Plaintiffs' Amended Complaint filed November 9, 1973**

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5307

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CARL A. BEAZER, *et al.*,

*Plaintiffs,*

—against—

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

*Defendants.*

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AMENDED COMPLAINT
(Class Action)

PRELIMINARY STATEMENT

1. This action is brought on behalf of persons who have been denied employment or dismissed from employment by the New York City Transit Authority (hereinafter "TA") or the Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MaBSTOA") solely because of their present or past participation in methadone maintenance programs duly licensed and authorized pursuant to state and federal laws and regulations (hereinafter referred to as "duly licensed and authorized methadone maintenance programs"). The action challenges the present TA and MaBSTOA policy of refusing to employ in any position all persons participating in such programs, without regard to their individual ability to perform, as indicated by their record of performance on-the-job with





the TA, MaBSTOA, or elsewhere, their record of adherence to the requirements of the methadone program in which they are enrolled, or any other relevant criterion.

2. The policy is challenged on the ground that it discriminates unlawfully against persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, since there is no basis for concluding that a person who is participating or who has participated in such a program is less qualified to perform as an employee of the TA or MaBSTOA, solely because of such present or past participation, than others accepted for such employment.

3. The TA's and MaBSTOA's policy is further challenged on the ground that it discriminates unlawfully against former heroin addicts who are participating or who have participated in duly licensed and authorized methadone maintenance programs, as compared to other former heroin addicts, including those participating in drug-free treatment programs. There is no reasonable ground for concluding that former heroin addicts who are presently participating or have participated in methadone maintenance programs are less qualified to perform the duties of TA or MaBSTOA employees than all other former heroin addicts.

4. The TA's and MaBSTOA's policy of firing all employees who are participating or who have participated in methadone maintenance programs is further challenged on the ground that it discriminates unlawfully against such persons, as compared to various other groups of employees

which the TA and MaBSTOA concludes are not fully qualified to perform the duties of all its various positions. These include alcoholics and persons with such medical disabilities as epilepsy or heart conditions. It is the TA's and MaBSTOA's policy not to fire such persons if they have three years' seniority but, rather, to consider their cases on an individual basis and assign them to job positions appropriate to their condition. There is no reasonable ground for concluding that present or past methadone maintenance program participants are, as compared to persons in these groups, less qualified to perform the duties of all the various positions in the TA and MaBSTOA.

5. The action charges, therefore, that the TA's and MaBSTOA's policy with respect to present and past methadone maintenance program participants constitutes a denial of governmental employment to a particular class of persons without rational justification in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

6. The action further alleges that the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs has a significant and substantial discriminatory impact on blacks and Hispanics,[1] since such programs' participants are disproportionately black and Hispanic as compared to the population eligible for employment with

[1] As used herein, the term "Hispanic" refers to persons who were born or who are descended from persons who were born in Puerto Rico, Cuba or other Caribbean countries.



the TA or MaBSTOA. The policy is therefore challenged on the additional ground that it constitutes a racially discriminatory employment criterion which has not been and cannot be demonstrated by the employer to be necessary to the safe and proper conduct of its business, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e *et seq.*)

7. The TA's and MaBSTOA's policy is further challenged on the ground that it conflicts with federal laws and regulations authorizing methadone maintenance treatment as one means of dealing with the problem of drug abuse. It is alleged that the TA's and MaBSTOA's policy burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of rights recognized by statutes and regulations of the United States.

JURISDICTION

8. This is a civil action brought under 42 U.S.C. §1981 providing for the equal rights of citizens and of all persons within the jurisdiction of the United States, including the right to contract; under 42 U.S.C. §1983, to redress the deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States; and under Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e *et seq.*) Plaintiffs seek a declaratory judgment, pursuant to 28 U.S.C. §2201, a permanent injunction, and such other relief as may be appro-

priate to remedy the unlawful discrimination practiced by defendants against plaintiffs and all others similarly situated. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(3) and (4); 42 U.S.C. §2000e-5(f)(3); and 28 U.S.C. §1331(a). The amount in controversy, exclusive of interest and costs, exceeds ten thousand dollars ($10,000) for each of the named plaintiffs.

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this action on their own behalf and on behalf of all those similarly situated, pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

10. It is impossible to enumerate with any precision the members of the class, but it is clear that the class is so numerous that joinder of all members is impracticable.

11. The class consists of:

A. All those persons who have been dismissed from employment by the TA or MaBSTOA, or would in the future be subject to dismissal, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

B. All those persons whose applications for employment with the TA or MaBSTOA have been rejected, or would in the future be subject to rejection, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

C. All those persons who have been or will in the future be deterred from applying for employment with



the TA or MaBSTOA by the TA's and MaBSTOA's policy of excluding from such employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs.

12. The plaintiffs will fairly and adequately protect the interests of the class. Each of them either was dismissed from employment with the TA or MaBSTOA or had his application for such employment denied, solely because of his present or past participation in a duly licensed and authorized methadone maintenance program. Their claims are typical of the claims of the class.

13. The questions of law and fact common to the class include the following:

A. Whether the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis, as compared to all other persons eligible for employment with the TA or MaBSTOA, and thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

B. Whether the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis,

as compared to other former heroin addicts, including those participating in drug-free treatment programs, and thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

C. Whether the TA's and MaBSTOA's policy of dismissing from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis as compared to various other groups of employees which the TA or MaBSTOA concludes are not fully qualified to perform the duties of all its various positions, and thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

D. Whether the TA's and MaBSTOA's policy of excluding from employment all persons participating in duly licensed and authorized methadone maintenance programs, constitutes a racially discriminatory employment criterion which has not been and cannot be demonstrated by the TA or MaBSTOA to be necessary to the safe and proper conduct of its business, and thereby violates the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution and Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e *et seq.*);

E. Whether the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed



and authorized methadone maintenance programs, burdens and impedes participation in such programs, in derogation of rights recognized by statutes and regulations of the United States;

F. What relief would be appropriate on behalf of the class.

PARTIES

14. Plaintiff Carl A. Beazer, a black, resides at 1074 Summit Avenue, Bronx, New York. He was hired by the TA in May, 1960. He was dismissed by the TA on August 15, 1972, solely because of his participation in a duly licensed and authorized methadone maintenance program.

15. Plaintiff Jose R. Reyes, an Hispanic, resides at 12-11 31st Avenue, Astoria, New York. He was hired by the TA in April, 1968. He was dismissed by the TA on September 29, 1972, solely because of his participation in a duly licensed and authorized methadone maintenance program.

16. Plaintiff Francisco Diaz, an Hispanic, resides at 3865 Baychester Avenue, Bronx, New York. He passed the examination for the position of Maintainer's Helper with the TA administered in or about February of 1970. At his preappointment medical examination he was found medically disqualified, and he was denied employment with the TA, on September 23, 1970, and continues to be excluded from such employment, solely because of his participation in a duly licensed and authorized methadone maintenance program.

16a. Plaintiff Malcolm K. Frasier, a black, resides at 1830 Lexington Avenue, New York, New York. He passed both the examination for the position of Bus Cleaner with MaBSTOA administered in or about late 1968 or early 1969, and the examination for the position of Bus Operator with MaBSTOA administered in or about October, 1972. At his preappointment medical examination for the position of Bus Operator he was found medically disqualified and was denied such employment with MaBSTOA on March 14, 1973, and continues to be excluded from such employment, due solely to the fact that he was then participating in a duly licensed and authorized methadone maintenance program. At his preappointment medical examination for the position of Bus Cleaner he was found medically disqualified and was denied such employment with MaBSTOA on April 12, 1973, and continues to be denied such employment, solely because of his past participation in a duly licensed and authorized methadone maintenance program.

17. Defendant TA exists pursuant to the laws of the State of New York (N.Y. Pub. Auth. Law §1201(1)), and is declared by law to be a body corporate performing a governmental function (N.Y. Pub. Auth. Law §1201(1) and §1202(2)). It has as its purpose, *inter alia,* the operation of the New York City subway system (N.Y. Pub. Auth. Law §1202(1)). In furtherance of that purpose it employs approximately 42,000-43,000 persons.

17a. Defendant MaBSTOA exists pursuant to the laws of the State of New York (N.Y. Pub. Auth. Law §1203-a (2)), and is declared by law to be a public benefit corporation which is a subsidiary corporation of defendant TA (N.Y. Pub. Auth. Law §1203-a(3)). It has as its purpose,



*inter alia,* the operation of certain omnibus lines in New York City (N.Y. Pub. Auth. Law §1203-a(3)). In furtherance of that purpose it employs approximately 7,000-8,000 persons.

18. Defendant William J. Ronan is a member of the TA and a director of MaBSTOA and serves as the chairman of the TA and MaBSTOA. He also serves as the TA's and MaBSTOA's chief executive officer and is responsible, *inter alia,* for the appointment, discipline and removal of the TA's and MaBSTOA's employees (N.Y. Pub. Auth. Law §§1201(2), 1203-a(2)).

19. Defendants William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, William A. Shea, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Frederic B. Powers and Mortimer Gleeson are all members of the TA and directors of MaBSTOA. Together with defendant Ronan they constitute all of the TA's members and all of MaBSTOA's directors.

20. Defendant Wilbur B. McLaren is the executive officer in charge of labor relations and personnel for the TA, and defendant Louis Lanzetta is its medical director.

21. Defendant New York City Civil Service Commission is responsible for promulgating rules governing the appointment, promotion and continuance of employment of all employees of the TA (N.Y. Pub. Auth. Law §1210(2)).

22. Defendant New York City Department of Personnel applies medical standards to applicants for employment with the TA.

23. Defendant Harry I. Bronstein serves as a member and as chairman of the Civil Service Commission, and as director of the Personnel Department.

24. Defendants David Stadtmauer and James W. Smith are members of the Civil Service Commission. Together with defendant Bronstein they constitute the Civil Service Commission's entire membership.

## Factual Allegations

*The Ta's and MaBSTOA's Policy*

25. The TA and MaBSTOA maintain an absolute policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, without regard to their individual ability to perform as demonstrated by their performance on-the-job with the TA or elsewhere, their record of adherence to the requirements of the methadone maintenance program in which they are participating or have participated, or any other relevant criterion.

26. This policy is enforced by means of a program initiated in or about March, 1970, for the purpose of screening out drug users, under which medical examinations, including urinalyses, are administered on a periodic basis to most TA and MaBSTOA employees, and are administered to applicants for employment prior to appointment.

27. Execuation of this policy resulted in the dismissal of plaintiff Beazer from employment with the TA.





A. Plaintiff Beazer was employed by the TA for eleven years, prior to his dismissal. During that period he demonstrated his ability to perform the duties of a variety of TA positions in a superior manner. He received a number of promotions, each of which was based on an assessment of his record, together with his performance on written and practical examinations designed to test a candidate's ability to perform the duties of the position being tested for. Through this process he was promoted from the position of car cleaner to conductor and, on May 15, 1966, to towerman. His performance as a towerman resulted in his being assigned the task of training many new employees.

B. In late April of 1971, plaintiff Beazer voluntarily entered the Methodone Maintenance Treatment Program administered by the United States Veterans Administration Hospital located in Manhattan. While participating in this program he continued to perform the duties of his position as towerman in a fully satisfactory manner, from approximately mid-July, 1971, until he was suspended on or about September 1, 1971.

C. On or about August 31, 1971, the TA received records from the Veterans Administration Hospital, in response to its request, indicating that plaintiff Beazer had been receiving methadone maintenance treatment, as a result of which he was immediately suspended from employment, and on October 4, 1971, charged with violating a TA regulation prohibiting the use of drugs. The charges specifically accused him of being "on a drug treatment program."

D. A hearing on these charges was conducted on November 3, and November 22, 1971. During the hearing the TA conceded that it maintained an absolute policy requiring dismissal of and denial of employment to, methadone maintenance program participants. Beazer conceded the charge that he was on a methadone maintenance program, but contended that that alone should not justify his dismissal. A specific request was made that if it was determined some disciplinary action was warranted, he be transferred from his job as towerman to a less critical job. On November 26, 1971, the Hearing Referee recommended that the charges be sustained and that Beazer be dismissed, effective November 26, 1971.

E. On June 29, 1972, the Impartial Disciplinary Review Board of the TA recommended that the Hearing Referee's recommendation be sustained. The Board noted that Beazer "has done his job well and has received a relatively few cautions and warnings for the time that he has been employed." It noted further that "from all of the evidence presented, it would appear that Mr. Beazer had handled his job competently while participating in the methadone maintenance program." The Board made its recommendation solely on the basis of findings that Beazer had in fact violated the rule prohibiting the use of drugs by reason of his participating in a methadone maintenance program. The Board urged the TA to reconsider its rules relating to drug users:

"to determine to what extent, if any, they should be revised in the light of modern medical and scientific advances in the treatment of drug usage. Moreover, it is the recommendation of this Board, that if it is found that an employee using methadone can work in some capacity for the Authority, the Authority take whatever steps that are necessary to reemploy Carl A. Beazer."



F. On August 15, 1972, the TA, without issuing an opinion or giving any reasons for its ruling, adopted the recommendations made in the disciplinary procedure, and dismissed Beazer from employment, effective November 26, 1972.

G. Plaintiff Beazer has had an excellent record in the Veterans Administration Methadone Maintenance Treatment Program from the time he entered, in April of 1971, to date. The Hearing Referee noted in his opinion that "credible evidence" had been presented:

"that he has never missed coming in and picking up his methadone, and that he is known to be complying with the program because urine samples are taken twice a week and tested.

"It therefore must be concluded that Respondent [Beazer] is adhering to the program. He was described as an 'excellent patient.'"

H. Following Beazer's suspension by the TA, he was employed by the Veterans Administration in their drug detoxification program as a rehabilitation technician counselor.

28. Execution of the TA's and MaBSTOA's policy against the employment, in any capacity, of persons who

are participating or who have participated in methadone maintenance programs, resulted in the dismissal of plaintiff Reyes.

A. Plaintiff Reyes was employed by the TA for almost four years, prior to his dismissal. During that period he demonstrated his ability to perform the duties of different positions with the TA in a superior manner. During his period of employment with the TA he was promoted from the position of Maintainers' Helper to Ventilation and Drainage Maintainer. This promotion was based on an assessment of his record, together with his performance on written and practical examinations designed to test a candidate's ability to perform the duties of the position being tested for. From approximately May 1, 1969, he was responsible for the training and supervision of numerous apprentices.

B. On or about March 1, 1970, plaintiff Reyes voluntarily entered the Beth-Israel Methadone Maintenance Treatment Program, at the St. Claire Hospital. He continued to perform the duties of his position as ventilation and Drainage Maintainer in a fully satisfactory manner for a period of over one and one-half years, until on or about November 1, 1971, when he was suspended from employment.

C. As a result of a medical examination, conducted on November 1, 1971, the Medical Director of the TA, defendant Lanzetta, discovered that plaintiff Reyes had been receiving methadone maintenance treatment, and told Reyes at that time that he was being suspended because of his participation in methadone maintenance treatment. He was suspended effective immediately, and on December 13, 1971, was charged with violating a TA regulation prohibiting the use of drugs.



D. A hearing on these charges was conducted on January 19, 1972. During the hearing the TA's absolute policy against the employment of methadone Medical Director of the TA, defendant Lanzetta, testified that he never gave, and it was his policy not to give, permission to TA employees to participate in methadone maintenance programs under any circumstances. And the Hearing Referee noted that the TA's "policy of not permitting employees who are under methadone treatment to remain in the system" had been established. Reyes conceded the charge that he was on a methadone maintenance program, but contended that that alone should not justify his dismissal. There was testimony that scientific tests administered to Reyes by a recognized expert demonstrated that Reyes' psychomotor performance while maintained on methadone, as determined by tests of his rotary pursuit skills and reaction times, was normal or above normal, as was his intellectual performance. On January 21, 1972, the Hearing Referee recommended that the charges be sustained and that Reyes be dismissed.

E. On September 29, 1972, the TA, without issuing an opinion or giving any reasons for its ruling, sustained the charges and dismissed Reyes from employment, effective January 20, 1972.

F. Plaintiff Reyes has had an excellent record in the Beth-Israel Methadone Maintenance Treatment Program at the St. Claire Hospital from the time he

entered, in March of 1970, to date. There was testimony at his hearing by the Medical Director of the St. Claire program that he had an excellent record, had never failed to come in to get his methadone as scheduled, and did not use drugs other than methadone.

G. He has been employed by the Mt. Sinai Methadone Maintenance Treatment Program as a social health advocate from January 17, 1972, to date.

29. Execution of the TA's and MaBSTOA's policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, resulted in the denial of such employment to plaintiff Diaz.

A. Plaintiff Diaz has been employed as a sheet metal mechanic with the same employer since approximately March, 1962, a period of almost eleven years. He has participated in the Bernstein Institute Methadone Maintenance Treatment Program of the Beth-Israel Medical Center since November of 1969, a period of approximately three years. Throughout his period of employment he has demonstrated his ability to perform in a superior manner. His fellow workers have elected him union shop steward for the last eight years, in recognition of his leadership abilities.

B. In or about February of 1970, plaintiff Diaz took the examination for the position of Maintainer's Helper with the TA, which he passed. At the preappointment medical examination, on or about June 5, 1970, he revealed the fact that he was a methadone maintenance program participant, and submitted letters from Dr.



Harold L. Trigg, Chief of the Methadone Maintenance Service, Associate Director of Psychiatry, and Associate Director of the Bernstein Institute, Beth-Israel Medical Center, and from a staff medical doctor. These letters testified to his excellent record in the Beth-Israel Program and specifically noted that he had been totally free of illicit drug use throughout his period of participation in the program. After having successfully completed all aspects of the medical examination, he was told that he was disqualified because methadone program participants were not accepted for employment with the TA.

C. Diaz appealed his "medical disqualification" to the TA and was notified that he did not meet the requirements as established by the TA and the Personnel Department. His subsequent appeal to the City Civil Service Commission was denied without opinion on September 23, 1970.

30. Plaintiff Diaz has had an excellent record of participation in the Beth-Israel Methadone Maintenance Treatment Program from the time he entered, in November of 1969, to date.

30a. Execution of the TA's and MaBSTOA's policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, resulted in the denial of such employment to plaintiff Frasier.

A. Plaintiff Frasier has held several positions of employment over the last ten years, and in all such positions has demonstrated his ability to perform as a

competent worker. Several of these positions have been as a truck driver, and one has been as a taxicab driver. In October of 1972, plaintiff Frasier began participating in the methadone maintenance program conducted by the Methadone Maintenance Treatment Center. On March 17, 1973, he left this program as a drug-free person after having completed a two month long process of detoxifying from methadone.

B. In or about late 1968 or early 1969, plaintiff Frasier took an examination for the position of Bus Cleaner with MaBSTOA, and in or about October of 1972, he took an examination for the position of Bus Operator with MaBSTOA. He passed both of these examinations.

C. At a preappointment medical examination for the position of Bus Operator, on or about March 9, 1973, plaintiff Frasier revealed that he had been a methadone maintenance program participant, but that he had almost completely detoxified from methadone. He was then taken to see Thomas L. Granger, MaBSTOA Administrative Manager for Personnel and Saul Solano, a MaBSTOA Administrative Associate. Both men informed him that it was the TA's policy not to employ persons with his record of methadone maintenance participation. In a letter dated March 14, 1973, Mr. Granger informed plaintiff Frasier that he would not be employed by MaBSTOA as a Bus Operator because "Your background does not meet the standards established for this position." Upon subsequent inquiry from plaintiff Frasier's counsel, Mr. Granger stated in a letter dated April 19, 1973, that plaintiff



Frasier had been denied the Bus Operator's position "because of medical background based on information he divulged to our Medical Director."

D. On or about March 22, 1973, plaintiff Frasier was notified that he was eligible to take a preappointment medical examination, on April 2, 1973, for the position of Bus Cleaner. Plaintiff Frasier reported for that examination, but instead of being allowed to complete it he was instructed to see Mr. Solano. Plaintiff Frasier informed Mr. Solano that he had detoxified from methadone on March 17, 1973, but Mr. Solano replied that he still could not be employed with MaBSTOA due to his past participation in methadone maintenance. In a letter dated April 12, 1973, Mr. Granger informed plaintiff Frasier that he would not be employed by MaBSTOA as a Bus Cleaner because "Your background does not meet the standards established for this position."

30b. Plaintiff Frasier had an excellent record as a methadone maintenance program participant. In a letter to the MaBSTOA medical department dated March 29, 1972, prior to plaintiff's rejection as a Bus Cleaner, Dr. G. Salazar, Clinical Director of the Methadone Maintenance Treatment Center, attested to this fact. Since plaintiff Frasier's withdrawal from methadone maintenance he has continued to report to the Methadone Maintenance Treatment Center for counseling and urinalyses on a regular basis. During this period he has shown no evidence of illicit drug use.

31. The present "Medical Standards and Regulations For All Operations and Maintenance Positions" with the

TA, proposed by the TA and issued May 7, 1971, by the City Civil Service Commission provide that at the pre-appointment medical examination a candidate will be disqualified for appointment if his urinalysis reveals the presence of "unauthorized" substances, and if "drug addiction or drug abuse" are determined. The TA and the Civil Service Commission define these terms to include methadone maintenance. These standards govern 53 classes of positions, and 81 per annum positions, covering approximately 35,000-36,000 TA employees. Positions governed included, for example, the following: Bus Maintainer, Car Cleaner, Car Inspector, Car Maintainer, Collecting Agent, Light Maintainer, Maintainer's Helper, Railroad Clerk, Railroad Porter, Telephone Maintainer, Turnstile Maintainer, Ventilage and Drainage Maintainer.

*The TA and MaBSTOA Policy Was Adopted Without Adequate Grounds for Concluding It Was Reasonable or Necessary*

32. The TA and MaBSTOA adopted their absolute policy against the employment of present and past methadone maintenance program participants, without having had any rational grounds for concluding that a person is not qualified satisfactorily to perform the duties of a TA or MaBSTOA employee, in any capacity, solely by virtue of his participation in such a program.

33. The TA and MaBSTOA made no effort to analyze the requirements of the many jobs to which their employees may be assigned, in order to determine the relevance of a person's present or past participation in a methadone maintenance program to his ability to perform the various different kinds of jobs.



34. The TA and MaBSTOA made no effort to assess the performance of TA or MaBSTOA employees who were participating or who had participated in methadone maintenance programs, and had no evidence that such employees were failing to perform the duties of their positions satisfactorily, or were not qualified to perform satisfactorily the duties of other positions within the TA or MaBSTOA prior to instituting the policy requiring their discharge and prohibiting the employment of any other such persons.

35. The TA and MaBSTOA had no reliable data related to the characteristics of present or past participants in duly licensed and authorized methadone maintenance programs indicating that such persons would not be able satisfactorily to perform the duties of TA or MaBSTOA employees:

A. The TA and MaBSTOA had no reliable data indicating that the taking of methadone pursuant to duly licensed and authorized methadone maintenance programs would adversely affect any functional capability which might be related to performance of the duties of TA or MaBSTOA employees;

B. The TA and MaBSTOA had no reliable data indicating that present or past participants in duly licensed and authorized methadone maintenance programs were more likely to be abusing drugs so as to adversely affect their ability to perform the duties of TA or MaBSTOA employees, than other persons accepted for employment.

36. The TA and MaBSTOA, therefore, adopted their absolute policy against the employment of present and past

methadone maintenance program participants without having had any reasonable grounds for concluding that said policy was necessary, or indeed that it was rationally related, to the safe and proper conduct of their business.

*The TA and MaBSTOA Policy Cannot be Justified as Reasonable or Necessary*

37. All available data indicate, in fact, that a person's ability satisfactorily to perform the duties of a TA or MaBSTOA employee would not be adversely affected solely by virtue of his present or past participation in a duly licensed and authorized methadone maintenance program.

38. Methadone maintenance is a widely recognized, officially sanctioned and increasingly dominant form of treatment for persons suffering from addiction to heroin. It is designed to prevent such persons from using heroin, and to enable them to work and otherwise lead productive lives in society.

39. Methadone has been under investigation for use in the maintenance treatment of persons addicted to heroin for more than nine years. Methadone maintenance is now a well-established mode of treatment, pursuant to which stabilizing doses of methadone are administered on a daily basis in order to eliminate the addict's psychological and physiological craving for heroin, and to establish a "blockade" shielding the former addict from the mental and physical effects of heroin.

40. After achieving favorable results with experimental programs, New York State became committed to methadone



maintenance on a large scale approximately three years ago. In January of 1970, Governor Rockefeller asked the New York State Legislature for millions of dollars to make "outpatient methadone facilities available . . . in every community with a substantial addiction problem" (Governor's Budget Message, Session Laws of New York 3053 (McKinney's 1970)). Methadone maintenance is now the dominant mode of treatment for heroin addiction in New York. In the New York City area alone, federal, state and local funds support more than twenty separate methadone maintenance programs with approximately 28,000 participants. The number of persons maintained on methadone is continually increasing.

41. The Food and Drug Administration of the United States Department of Health, Education and Welfare, after consultation with numerous professional groups, advisory committees and individual experts, recognized methadone's established value in the maintenance treatment of heroin addiction by proposing on April 5, 1972, that the drug be removed from its experimental classification under existing federal regulations (Proposed 21 C.F.R. §130.48(b), 37 Fed. Reg. 6940 (1972)). A regulation implementing this recommendation is to be published shortly.

42. Under federal statutes, and both proposed and existing federal regulations, the operations of methadone maintenance programs are strictly controlled, and participation in such programs is carefully monitored. Any person dispensing methadone must register annually with the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, and obtain the approval of the Food and

Drug Administration (21 U.S.C. §822; 21 C.F.R. §301; 21 U.S.C. §355; 21 C.F.R. §130.44; Proposed 21 C.F.R. §130.48 (b), 37 Fed. Reg. 6940 (1972)). Present New York State regulations also require that dispensers of methadone obtain certificates of approval and registration issued by the New York State Department of Health, Bureau of Narcotic Control, pursuant to §3311 of the New York Public Health Law (10 N.Y.C.R.R. §80.23). After April 1, 1973, certification under a detailed regulatory scheme established by Title V of the New York Controlled Substances Act will be required of all methadone maintenance programs in the State. Failure to comply with either the state or federal regulatory structure renders the operator of a methadone maintenance program criminally liable.

43. The Food and Drug Administration requires that methadone maintenance program participants be medically tested at least once weekly for evidence of the use of heroin or any other drug clinically indicated (21 C.F.R. §130.44(c)(6); Proposed 21 C.F.R. §130.48(b)(2), 37 Fed. Reg. 6942 (1972)).

44. Pursuant to the laws and regulations cited in paras. 41-42 above, and their own policies, administrators of methadone maintenance programs in the New York City area have instituted a variety of procedures to ensure that participants take their methadone as prescribed, and to determine whether they take illicit drugs. These procedures include, *inter alia*: supervision of the administration of methadone to ensure that it is taken on a regular basis as prescribed; regular urinalysis (at least one weekly) to determine whether the prescribed methadone is being taken



and also whether there has been illicit drug use; supervision and monitoring by counselors and other supportive personnel who are proficient in detecting the symptoms of illicit drug use.

45. The TA and MaBSTOA have no comparable procedures to assure themselves that their employees are not using illicit drugs. On information and belief it is the TA's and MaBSTOA's policy at present to test their employees for illicit drug use only approximately once a year, and persons in certain positions of employment with the TA and MaBSTOA are apparently never tested.

46. Scientifically designed and administered studies have uniformly found that methadone maintenance has no adverse effect on performance effectiveness. These studies are based on tests of intellectual functioning, and of psychomotor performance as determined by rotary pursuit tests and by visual and auditory reaction-time tests. Studies of the performance of persons in situations requiring both skilled performance and social responsibility also show that methadone maintenance has no adverse effect.

47. The City of New York has recognized both the employability, and the need for employment, of ex-addicts, including ex-addicts who are or who have participated in methadone maintenance programs. On March 22, 1972, the City's Department of Personnel published a personnel policy and procedure bulletin relating to "City Policy on Employment of Ex-Drug Addicts." It notes that the policy resulted from "an intensive study of the employability of ex-drug addicts." And it provides that ex-addicts, including

specifically those persons participating in methadone maintenance programs, shall not be automatically disqualified from employment in any City position except the uniformed services.

48. The TA's and MaBSTOA's absolute policy against the employment of methadone maintenance program participants is therefore not necessary, and indeed is not rationally related, to the safe and proper conduct of their business.

*The TA's and MaBSTOA's Policy Discriminates Against Methadone Maintenance Program Participants as Compared to Other Former Heroin Addicts*

49. The TA and MaBSTOA do not maintain an absolute policy against the employment of former heroin addicts who have not participated in methadone maintenance programs. Instead the TA and MaBSTOA make decisions as to the employment of such persons based on the circumstances of the individual case.

50. There is no reasonable ground for concluding that former heroin addicts who are presently participating or who have participated in duly licensed and authorized methadone maintenance programs are less qualified to perform the duties of TA and MaBSTOA employees than all other former heroin addicts, including those participating in drug-free treatment programs.

*The TA's and MaBSTOA's Policy Discriminates Against Present and Past Methadone Maintenance Program Participants as Compared to Other Groups Which the TA and MaBSTOA Conclude Are Not Fully Qualified For All Their Positions*



51. The TA and MaBSTOA do not maintain an absolute policy requiring the discharge of employees suffering from a variety of medical or other disabilities including alcoholism, epilepsy, or heart conditions, who are as a result, in the TA's and MaBSTOA's opinion, not fully qualified to perform the duties of all their various positions. Instead the TA and MaBSTOA allow such persons, under certain circumstances, to continue in their employ, limiting them to select positions where that appears necessary. Thus, for example:

A. TA and MaBSTOA employees with three years' seniority who are discovered to be alcoholics are not automatically discharged. Instead they are suspended from duty and provided with an opportunity to attend an alcoholic treatment program. Upon discharge by the treatment center the alcoholic is allowed to resume work with the TA or MaBSTOA in a non-critical position. If he maintains a good record for three subsequent years, he will be eligible for his previous position, even if it is a critical, safety-sensitive position. Approximately 3,000 employees are now participating in the TA's alcoholism program, receiving treatment and/or counselling.

B. TA and MaBSTOA employees with three years' seniority who are discovered to have medical disabilities such as epilepsy or heart conditions, are placed, whenever possible, in "limited service" positions, rather than being discharged. The TA now has approximately 1,500 employees in limited service positions.

52. There is no reasonable ground for concluding that methadone maintenance program participants are less qualified to perform the duties of all the various positions within the TA or MaBSTOA than employees in the groups referred to in para. 51 above.

*The TA's and MaBSTOA's Policy Has a Racially Discriminatory Impact*

53. Statistics available from the United States Department of Commerce, Bureau of the Census indicate that the civilian workforce[2] for the New York Standard Metropolitan Statistical Area[3] is approximately 15.0% black and 5.1% Hispanic. The racial composition of this population can be assumed to approximate the racial composition of the population eligible for employment with the TA and MaBSTOA save for their policy of excluding all present and past methadone maintenance program participants. The methadone maintenance population, essentially a subgroup of the civilian workforce, is approximately 30.3% black and 19.7% Hispanic.[4] This data indicates that the

[2] "Civilian workforce" is defined by the Bureau of the Census to include all non-military persons who are either employed, or looking for and available to accept employment.

[3] "Standard Metropolitan Statistical Area" (SMSA) is a designation utilized by the Bureau of the Census. Counties contiguous to a county or counties containing a city of 50,000 persons or more are included in a SMSA if, according to criteria established by the Bureau of the Census, they are socially and economically integrated with the central city. The New York SMSA includes New York City and Westchester, Rockland, Nassau and Suffolk Counties. It comprises the area from which the TA and MaB STOA can reasonably be expected to draw their 49,000-51,000 employees.

[4] Records regarding the ethnic composition of the methadone maintenance population are maintained by the Rockefeller University Methadone Information Center. Under contract to the New York State Narcotic Addiction Central Commission, the center is responsible for gathering extensive information concerning methadone maintenance in the New York City metropolitan area.



probability of a black or Hispanic person being denied employment by the TA or MaBSTOA due to his present or past participation in methadone maintenance is substantially and significantly higher than the same probability for his white counterpart.

54. Hence, the TA's and MaBSTOA's policy of excluding all present and past methadone maintenance program participants from employment has a significant and substantial discriminatory impact upon black and Hispanic persons otherwise eligible for TA and MaBSTOA employment.

*The TA's and MaBSTOA's Policy Burdens and Impedes Participation In Methadone Maintenance Treatment*

55. Federal law, and the regulations and policies of various federal governmental agencies, support the right to participate in methadone maintenance treatment. Thus the Drug Abuse Office and Treatment Act of 1972, Public Law 92-255, 86 Stat. 65, sect. 101(8), provides that: "Control of drug abuse requires the development of a comprehensive, coordinated long-term federal strategy that encompasses . . . effective health programs to rehabilitate victims of drug abuse." The federal regulations referred to in paras. 41-43 above provide a regulatory scheme pursuant to which persons can legally be maintained on methadone. Federal agencies provide substantial financial support for the conduct of methadone maintenance programs.

56. Employment is generally recognized to be crucial to the success of a methadone maintenance treatment program. Thus, for example, the "City Policy on Employment of Ex-Drug Addicts" referred to in para. 47 above, states that "the assurance to the addict of a gainful and rewarding employment is an essential motivating force for undertaking and completing treatment for his addictive habit."

57. Methadone maintenance is a treatment modality which may last anywhere from a few years to a lifetime. Employment opportunity for program participants is, therefore, additionally essential.

58. The TA's and MaBSTOA's policy of excluding from employment all methadone maintenance program participants tends to discourage persons from participating in methadone maintenance porgrams, penalizes persons who do participate, and reduces their opportunities for rehabilitation.

VIOLATIONS OF LAW

59. As a result of the defendants continuing pattern and practice of discrimination, as illustrated by the specific examples of discrimination described above, plaintiffs and the class they represent have been and are being denied employment with the TA and MaBSTOA in derogation of their rights under the Fourteenth Amendment to the United States Constitution; under 42 U.S.C. §§1981 and 1983; and Under Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e *et seq.*).





60. The TA's and MaBSTOA's policy of excluding from employment, in any capacity, all present and past participants in methadone maintenance programs violates their rights in that:

A. The policy results in the denial of public employment to certain classes of persons without rational justification in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution;

B. The policy has a significant and substantial discriminatory impact on black and Hispanic persons otherwise eligible for TA and MaBSTOA employment, and neither has been nor can be justified by the TA and MaBSTOA as necessary to the safe and proper conduct of their business, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution and Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e *et seq.*);

C. The policy burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of rights recognized by statutes and regulations of the United States.

IRREPARABLE INJURY

61. Plaintiffs and the class they represent have no adequate remedy at law. Plaintiffs have suffered, are suffering, and will continue to suffer irreparable injury as a result of defendants' discriminatory policies and practices unless and until the relief demanded in this complaint is granted.

*Plaintiffs' Amended Complaint filed November 9, 1973*

PRAYER FOR RELIEF

WHEREFORE, plaintiffs individually, and on behalf of all others similarly situated, respectfully pray that this Court:

A. Declare, pursuant to 28 U.S.C. §2201, that defendants' refusal to employ, in any capacity, all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs is in violation of the laws and the Constitution of the United States;

B. Enjoin defendants, their agents, employees, and all those acting in concert with them, and their successors, from refusing to employ, in any capacity, persons who are participating or who have participated in duly licensed and authorized methadone maintenance program solely because of such participation;

C. Order that plaintiffs, Beazer, Reyes, Diaz and Frasier and all other members of the class they represent who were dismissed, or whose applications for employment were denied, solely because of their participation in duly licensed and authorized methadone maintenance programs, be provided employment with the TA or MaBSTOA in positions appropriate to their abilities and experience together with backpay and other benefits of employment from the date they were unlawfully discharged or denied employment;

D. Retain jurisdiction of this action until such time as the Court can be assured defendants are complying with its order;

E. Award plaintiffs their costs, including disbursements and reasonable attorneys' fees;



*Plaintiffs' Amended Complaint filed November 9, 1973*

F. Grant such other and further relief as may be proper.

Dated: New York, New York
November 8, 1973

Respectfully submitted,

ELIZABETH B. DUBOIS
ERIC D. BALBER
271 Madison Avenue
New York, New York 10016
(Legal Action Center of the City of New York, Inc.)

MICHAEL MELTSNER
435 West 116 Street
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10 Columbus Circle
New York, New York 10019

*Attorneys for Plaintiffs*

**Answer of Defendant New York City Transit Authority and Related Defendants to Amended Complaint**

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5307

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CARL A. BEAZER, *et al.*,

*Plaintiffs,*

—against—

NEW YORK CITY TRANSIT AUTHORITY,

*Defendants.*

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ANSWER OF DEFENDANTS NEW YORK CITY TRANSIT AUTHORITY, ET AL. TO PLAINTIFFS' AMENDED COMPLAINT

The defendants, NEW YORK CITY TRANSIT AUTHORITY, WILLIAM J. RONAN, WILLIAM L. BUTCHER, LAWRENCE R. BAILEY, HAROLD L. FISHER, WILLIAM A. SHEA, EBEN W. PYNE, LEONARD BRAUN, JUSTIN N. FELDMAN, DONALD H. ELLIOTT, FREDERIC B. POWERS, MORTIMER GLEESON, WILBUR B. MCLAREN, and LOUIS LANZETTA, by their attorney, JOHN G. DE ROOS, answering the amended complaint:

First: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 30, 30b, 38, 39, 41, 42, 43, 44, 55, 56 and 57.



*Answer of Defendant New York City Transit Authority and Related Defendants to Amended Complaint*

Second: Deny the allegations of paragraph 14 except (a) admit that the plaintiff Carl A. Beazer is black and was hired by the Transit Authority on May 11, 1960 and dismissed August 15, 1972 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Beazer's residence.

Third: Deny the allegations of paragraph 15 except (a) admit that the plaintiff Jose R. Reyes was hired by the Transit Authority on April 29, 1968 and dismissed on September 29, 1972 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Reyes' ethnic background or place of residence.

Fourth: Deny the allegations of paragraph 16 except (a) admit that the plaintiff Francisco Diaz passed an examination for the position of Maintainer's Helper given by the City Civil Service Commission on or about February 28, 1970, but was medically disqualified for employment with the Transit Authority and denied appointment on June 5, 1970 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Diaz' ethnic background or place of residence.

Fifth: Deny the allegations of paragraph 16a except (a) admit that the plaintiff, Malcolm K. Frasier, is black, and after passing an examination for the position of bus operator with MaBSTOA, was medically disqualified and denied appointment on March 14, 1973, and thereafter was again medically disqualified on April 12, 1973 for the

position of bus cleaner and (b) deny they have knowledge or information sufficient to form a belief as to the allegations respecting Frasier's residence.

Sixth: Deny the allegations of paragraph 22 except admit that the Transit Authority applies to applicants for employment medical standards promulgated by the City Civil Service Commission after consultation with the Authority.

Seventh: Deny the allegations of paragraph 25 except admit that the Transit Authority and MaBSTOA do not employ persons who use or have a history of using narcotic drugs, including methadone. Rule 11(b) of the Rules and Regulations of the Transit Authority Governing Employees Engaged in the Operation of the New York City Transit System, provides as follows:

> "Employees must not use, or have in their possession, narcotics, tranquilizers, drugs of the Amphetamine group or barbiturate derivatives or paraphernalia used to administer narcotics or barbiturate derivatives, except with the written permission of the Medical Director—Chief Surgeon of the System."

Eighth: Deny the allegations of paragraph 26 except admit that the Transit Authority and MaBSTOA screen applicants for employment for possible drug usage by means of medical examinations, including urinalysis, and, on a periodic basis, similarly screen certain classes of employees assigned to operating positions.

Ninth: Deny the allegations of paragraph 27 except admit that the plaintiff Carl A. Beazer was first employed



by the Transit Authority as a Car Cleaner on May 11, 1960, was later promoted to the position of Conductor and on May 15, 1966 was promoted to the position of Towerman; that on or about August 31, 1971, the Medical Department of the Authority received a written report from the Veterans Administration Hospital in New York City indicating, among other things, that Beazer had a 15 year history of drug dependence and was then participating in the hospital's methadone maintenance treatment program; that he was suspended from duty on September 1, 1971 and on October 4, 1971, pursuant to §75 of the Civil Service Law of the State of New York, was charged with misconduct for violating the aforesaid Rule 11(b); that a hearing of the charges was conducted on November 3, 22 and 24, 1971, and the Hearing Referee recommended to the Authority that the charges be sustained and that Beazer be dismissed from service effective November 26, 1971; that prior to the Authority's acting upon the recommendation Beazer appealed to a three-member Impartial Disciplinary Review Board, established pursuant to agreement between the Transit Authority and the Transport Workers' Union of America, Local 100, which is the labor representative for nearly all of the Authority's hourly-paid employees, including employees in the title of Towerman; that the Review Board recommended to the Authority that the recommendation of the Hearing Referee be sustained and on August 15, 1972, the Transit Authority, acting by W. B. McLaren, its Executive Officer for Labor Relations and Personnel, adopted the recommendation of the Hearing Referee and Beazer was dismissed from the Authority's employ effective November 26, 1971. (Exhibit A annexed).

Tenth: Deny the allegations of paragraph 28 except admit that the plaintiff Jose R. Reyes was first employed by the Transit Authority as a Maintainer's Helper on April 29, 1968 and was promoted to the position of Maintainer (Ventilation and Drainage) on July 5, 1970; that on November 1, 1971, Reyes was medically examined and screened for narcotic use resulting in medical findings of such usage; that he was suspended from duty on November 8, 1971 and on or about December 13, 1971 was charged with misconduct for using heroin and methadone in violation of the aforesaid Rule 11(b); that a hearing was held on January 19, 1972 and on or about January 21, 1972, the Hearing Referee recommended to the Authority that the charge be sustained and Reyes dismissed from service effective January 20, 1972; that the Authority by its Executive Officer, W. B. McLaren, approved the recommendation on September 29, 1972. (Exhibit B annexed).

Eleventh: Deny the allegations of paragraph 29 except admit that plaintiff Francisco Diaz passed an examination for the position of Maintainer's Helper given by the City Civil Service Commission on February 28, 1970; that he was denied appointment to such position by the Transit Authority upon medical findings of narcotic drug use; that Diaz appealed from such denial to the City Civil Service Commission which denied his appeal on September 23, 1970.

Twelfth: Deny the allegations of paragraph 30a except admit that the plaintiff Frasier passed examinations for the positions of Bus Operator and Bus Cleaner with





MaBSTOA, and when it appeared during pre-employment processing that he was or recently had been a participant in a methadone maintenance program, he was informed by MaBSTOA's representative, Thomas L. Granger, Administrative Manager for Personnel, on March 14, 1973 and April 12, 1973, respectively, that he would not be appointed to the position of Bus Operator or Bus Cleaner because he did not meet the prescribed medical standards.

Thirteenth: Deny the allegations of paragraph 31 except admit that on or about May 7, 1971 the City Civil Service Commission, after consultation with the Transit Authority, promulgated "Medical Standards and Regulations for All Operations and Maintenance Positions, New York City Transit Authority," and the Court is respectfully referred to such document for its substantive provisions and the scope of its application.

Fourteenth: Deny the allegations of paragraphs 32, 33, 34, 35, 36, 37, 46, 48, 49, 50, 52, 53, 54, 58, 59, 60 and 61.

Fifteenth: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 except they admit that methadone maintenance is one of several modalities of treatment for narcotic addiction.

Sixteenth: Deny the allegations of paragraph 45 except admit that pursuant to Rule 31 of the Rules and Regulations Governing Employees Engaged in the Operation of the New York City Transit System, all persons, before they are appointed or promoted to positions in the Transit Authority, are required to submit to medical examinations

to determine their medical fitness to perform the duties of the positions sought; that certain classes of operating employees are periodically examined to determine their medical fitness to perform the duties of the positions held by them, and at any time the Medical Director of the Transit Authority or the employee's department head may order or require an individual employee to submit to a medical examination if in his opinion such examination is indicated. The same requirements obtain in MaBSTOA.

Seventeenth: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 except admit that on or about March 22, 1972, the Department of Personnel of the City of New York published a document entitled "Personnel Policy and Procedure Bulletin" relating to City policy on the employment of ex-drug addicts, but that such policy and procedure are not applicable to the defendant Transit Authority or MaBSTOA.

Eighteenth: Deny the allegations of paragraph 51 except admit that under rules, regulations and working conditions of the Transit Authority and MaBSTOA a permanent employee who has a minimum period of two years service and is medically found to be permanently disqualified from performing the full duties of his position because of a non-service connected disability may, in the discretion of such Authority, be assigned to other work provided he is qualified therefor and such work is available, and a permanent employee of the Transit Authority who is disabled from performing the duties of his position as a result of using alcohol may, instead of



being dismissed on disciplinary charges, and provided he has at least three years of service, be invited to accept a program of counseling and therapy by such Authority, the charges being held in abeyance pending the outcome of such counseling; and an employee of MaBSTOA disabled from performing the duties of his position as a result of using alcohol will be dismissed subject to reinstatement provided he successfully cooperates with a similar counseling service maintained by MaBSTOA.

WHEREFORE, the defendants, New York City Transit Authority, William J. Ronan, William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, William A. Shea, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Frederic B. Powers, Mortimer Gleeson, Wilbur B. McLaren and Louis Lanzetta, demand judgment dismissing the complaint, with costs and disbursements.

JOHN G. DE ROOS
*Attorney for Defendants, New York City Transit Authority, et al.*
Office & P. O. Address
370 Jay Street
Brooklyn, N. Y. 11201
212—852-5000

## EXHIBIT A

## DISCIPLINARY DECISION

Date: August 15, 1972

Name of Employee: Carl A. Beazer

Title: Towerman

Pass No.: 053030

Department: Rapid Transit Operations—Div. A

After reviewing the record of the disciplinary hearing affecting the above named employee, I have adopted the recommendations made in the disciplinary procedure.

/s/ W. McLaren
Executive Officer
for
Labor Relations and Personnel

FILE DISCIPLINE

W. Owens Employee
L. Peterson File

November 25, 1971

Daniel Gutman, Hearing Referee

New York City Transit Authority

Hearing of Charges Preferred Against
Carl A. Beazer—1165 E. 224th Street
Bronx, New York 10466
Towerman—Pass 053030—Rapid Transit Operations
Div. A



*Exhibit A Annexed to Answer of Defendants*

Dates of Hearing: November 3, 1971 and November 22, 1971

Charged with Misconduct in possessing and using drugs, as is more particularly set forth in Exhibit #1 of the transcript of the hearing, which is attached hereto and made a part hereof.

Towerman Beazer was present at the hearing. He was represented by the Legal Aid Society, Myran Schonfeld, Esq., of Counsel. The Authority was represented by John G. de Roos, Esq., Joseph Warde, Esq. and Edward Summers, Esq., of Counsel. Respondent admitted that he had received the charges preferred against him. He denied the charges.

Towerman Beazer is 36 years of age and has been in service since May 11, 1960.

Recommendation: It is recommended that the charges be sustained.

Respondent is charged with Misconduct in that he violated Rule 11(b) of the Rules and Regulations Governing Employees in the Operation of the New York City Transit System.

Rule 11(b) provides as follows:

"Employees must not use, or have in their possession, narcotics, tranquilizers, drugs of the Amphetamine group or barbiturate derivatives or paraphernalia used to administer narcotics or barbiturate derivatives, except with the written permission of the Medical Director—Chief Surgeon of the System."

It is alleged in the Specification that prior to June 21, 1971, Respondent possessed and used narcotic drugs; that he was and is on a drug treatment program; and that he is medically incompetent to perform the duties of his title.

Respondent is a Towerman, having been appointed to that position on May 15, 1966.

It was conceded that Respondent was a "prior" user of heroin. (Stenographer's minutes, page 3).

It was established that Respondent is currently on the Methadone Maintenance Program of the Veterans Administration Hospital. (Stenographer's minutes pages 4, 14)

Credible evidence was offered by the Chief of the Methadone Maintenance Program at Veterans Administration Hospital to the effect that Respondent remained in the Hospital for a period of six weeks; that he was discharged from the in-patient phase (of treatment) to the out-patient phase, which requires him to come back three times a week to pick up methadone; (Stenographer's minutes, page 15) that he has never missed coming in and picking up his Methadone; and that he is known to be complying with the program because urine samples are taken twice a week and tested. (Stenographer's minutes page 16)

It therefore must be concluded that Respondent is adhering to the program. He was described as "an excellent patient". (Stenographer's minutes page 17)

It is the Respondent's contention that because he is no longer a user of heroin and is on the Methadone Program, disciplinary discharge from employment is



unwarranted and that it is in violation of the due process clause of the State and Federal Constitutions.

The able lawyers for the Respondent and for the Authority presented a comprehensive and detailed discussion of the factors upon which each of the parties relies. The case is a serious one,—for the Authority, one of first impression. Accordingly, great latitude was extended in the admission of evidence in order that the record may be complete, even to the extent of exploring, by medical testimony, the position that make the Methadone Program a subject of some controversy. There was detailed, in behalf of the Respondent, the various steps which accompany or precede admission into the program, its claimed effects, the scientific bases upon which they rest, and the measure of success which is claimed for it.

The Authority's case was predicated upon reasons supporting its demand that Respondent be discharged from employment. It included testimony by physicians, —one the Medical Director of the Authority, which highlighted the controversy over this drug.

Of prime significance was the testimony of the Executive Officer for Labor Relations and Personnel Wilbur B. McLaren in which he discussed in thorough detail, the problems and policies which lead the Authority to conclude that it should not be required to continue the Respondent in its employ.

Of all the conflicting and opposing views expressed by the physicians who testified in behalf of either side, several facts stand out beyond dispute and must be deemed established. First, that the use of methadone creates a "block" against the desire or craving for

heroin. Second, that this "block" continues only as long as the patient continues in the Methadone Program. Third, that there can be no assurance of continued interest in and adherence to the program. Fourth, that the "block" is limited to the desire for heroin, and there is, consequently, no assurance that the subject will not turn to other narcotic drugs or alcohol. Fifth, that the program has its "drop-outs".

It is, of course, recognized that employment in gainful occupation is important to the Methadone patient, as it is to all able bodied persons who are attempting re-adjustment and rehabilitation. We must, however, consider the milieu for fulfillment of this need in proper perspective. Employment should be sought out and provided, but not in the service of a public agency which has the responsibility of running a railroad with operations of the size and magnitude of the Transit Authority.

These matters, however, were fully discussed by the persons most qualified to explain them, and by the official who is responsible for the operations of the Authority's personnel. In my considered judgment, the policy of the Authority, as enunciated by Mr. McLaren, is reasonable, and is necessary in the interest of the security of the Authority, and of public safety and confidence in the transit system.

During the course of the Hearing, decision was reserved on several objections, to evidence that was received. All such objections which were not ruled upon, are now over-ruled.

Having found charges sustained, I consulted this employee's disciplinary record. Said record is attached



hereto and made a part hereof. Employed since May 11, 1960, Respondent has had 8 Cautions and 3 Warnings. Five of the violations involved were functional.

It is accordingly RECOMMENDED that the charges be SUSTAINED and that Respondent be DISMISSED from the service effective as of the close of business on November 26, 1971.

Daniel Gutman
Hearing Referee

175/DG:smc

DECISION:

RECOMMENDATION APPROVED:

.....

Executive Officer for
Labor Relations and Personnel

## EXHIBIT B

DATE January 21, 1972

FROM: Daniel Gutman, Hearing Referee

TO: New York City Transit Authority

SUBJECT: Hearing of Charges Preferred Against
Jose Reyes—12-11 31st Avenue
Astoria, New York 11102

Ventilation & Drainage Maintainer—Pass
741617
Mtce. of Way Dept.

*19 JJF*

DATE OF HEARING: January ~~20~~, 1972 *$5.2425*

Charged with Misconduct in using narcotic drugs without the permission of the Authority's Medical Director, as is more particularly set forth in Exhibit #1 of the transcript of the hearing, which is attached hereto and made a part hereof.

Ventilation and Drainage Maintainer Reyes was present at the hearing. He was represented by Community Action for Legal Services, Inc., Richard J. Hibler, Esq., of Counsel. The Authority was represented by John G. de Roos, Esq., Joseph Warde, Esq., of Counsel. Respondent admitted that he had received the charges preferred against him. He admitted the charges.

Ventilation and Drainage Maintainer Reyes is 26 years of age and has been in service since April 29, 1968.



*Exhibit B Annexed to Answer of Defendants*

RECOMMENDATION: It is RECOMMENDED that the charges herein be SUSTAINED.

The evidence proved the charges.

Having found charges sustained, I consulted this employee's disciplinary record. Said record is attached hereto and made a part hereof. Employed since April 29, 1968, Respondent has had 2 Departmental Hearings (1969, 1970).

It is accordingly RECOMMENDED that the charges be SUSTAINED and that *Respondent be* DISMISSED *from the service effective as of the close of business on January 20, 1972.*

/s/ DANIEL GUTMAN
Hearing Referee

FEB 2 1972

175/DG:emc

DECISION:

RECOMMENDATION APPROVED:

/s/ W. MCLAREN
Executive Officer for
Labor Relations and Personnel

SEP 29 1972

**Compilation of the Agreed to and Contested Facts Together with Plaintiffs' Submission Regarding Documentation Contained in the Record and Update Thereto (Plaintiffs' Exhibits 31 and 31A)**

• • • • •

Plaintiffs will set forth herein the parties' proposed findings regarding the facts relevant to this case, numbered in accordance with the documents previously submitted to the Court, together with an indication with respect to each as to:

1) whether the parties have agreed and:

a) if so, the language upon which they have agreed;

b) if not, the respective parties' positions as contained in the proposed findings and responses thereto submitted to the Court to date;

2) the evidence supporting plaintiffs' position contained in the proceedings to date including specifically the depositions, defendants' answers to plaintiffs' interrogatories, documents produced in response to plaintiffs' requests for production of documents, and transcripts of previous proceedings.

Plaintiffs submit herewith in separate volumes:

1) The depositions, with those portions plaintiffs wish to offer into evidence bracketed and underlined in red; and those portions of which defendants wish to rely underlined in blue;

2) The documents we wish to offer into evidence as exhibits, numbered in order. (These documents shall



be referred to herein as PX .....) (Included among these documents are the interrogatories and responses thereto.)

***Except as indicated below, the City defendants have agreed to all plaintiffs' proposed findings insofar as they affect the City.***

• • • • •

II. DEFENDANTS

Plaintiffs and defendant TA are agreed on the following findings:

2. Defendant New York City Transit Authority• (hereinafter "TA") exists pursuant to the laws of the State of New York as a public benefit corporation performing a governmental function. It has as its purpose, *inter alia,* the operation of the subway system and certain bus lines in New York City.

3. Defendant Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MaBSTOA") exists pursuant to the laws of the State of New York as a public benefit corporation and subsidiary corporation of defendant New York City Transit Authority. It has as its purpose, *inter alia,* the operation of certain bus lines in New York City.

4. Defendant William J. Ronan served as a member of the New York City Transit Authority, as a director

• Except as specifically differentiated, the facts stated herein with respect to the defendant New York City Transit Authority are true also with respect to the defendant Manhattan and Bronx Surface Transit Operating Authority.

of Manhattan and Bronx Surface Transit Operating Authority, and as the chairman of the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority, from March, 1968 until May, 1974. During that period, defendant Ronan also served as chief executive officer of both the TA and MaBSTOA and, as part of his duties in those positions, bore overall responsibility for the appointment, discipline and removal of all employees. Defendant Ronan personally reviewed the policy with respect to the employment of former drug abusers and approved its continuance.

• • • • •

8. Defendant Wilbur B. McLaren is Executive Officer in charge of labor relations and personnel for the TA and has served in that position since 1969. As part of the duties of his position McLaren bears operational responsibility for the appointment, discipline and removal of all TA employees, in accordance with the New York Civil Service Law and the rules and regulations of the New York Civil Service Commission and the rules and regulations of the TA. McLaren is consulted with respect to the formulation and revision of policies relating to the appointment, discipline and removal of TA employees, when such formulation or revision may occur.

With respect to this para. 8, plaintiffs proposed in addition the following finding, with which the TA has not agreed:

Defendant McLaren has personally approved the TA's policy with respect to the employment of former drug



abusers and he has been responsible for its administration.

In support of this finding plaintiffs submit McLaren Dep. I, TR. 22* ["I probably played a major role" in formulating or continuing the TA's present drug policy]; see generally portions of McLaren Dep. TR. I and II submitted by plaintiffs. Plaintiffs and defendant TA are agreed on the following findings:

9. Dr. Louis Lanzetta is medical director of the TA and has served in that position since 1970. As part of the duties of his position, Dr. Lanzetta is responsible for the administration of the policy with respect to the employment of former drug abusers insofar as it requires an assessment of the drug abuse histories of specific persons. Dr. Lanzetta has approved the policy and recommended to defendant McLaren that it be continued.

10. The appointment, promotion and in certain instances the continuance of the service of all TA employees is governed by the provisions of the Civil Service Law of the State of New York and the Rules of the City Civil Service Commission. Rules of the TA regulating the conduct of its employees are adopted and promulgated by the Board which constitutes the TA. Defendant New York City Civil Service Commission is responsible, pursuant to the laws of the New York State, for the promulgation and enforcement of

* When there is more than one deposition transcript of a single witness they are designated herein as "I" or "II".

rules governing the appointment, promotion and in certain instances the continuance of employment of all TA employees. The Civil Service Commission may hear appeals by applicants for employment who are medically disqualified by the TA, which acts for the Department of Personnel in conducting medical examinations of eligibles certified to the TA by the Department. It may also hear appeals pursuant to Section 76 of the Civil Service Law by employees subjected to discipline by the TA.

• • • • •

III. THE DRUG POLICY

A. GENERALLY

• • • • •

17. Plaintiffs submitted the following proposed finding with which the TA did not agree:

> Approximately 5% of the persons certified eligible for TA employment are rejected because it is discovered that they are drug-free former addicts or former heroin addicts successfully participating in duly licensed and authorized methadone maintenance programs.

The TA admitted in their response that about 4½% were disqualified but limited this to persons disqualified for *present* drug use. Plaintiffs submit that the TA must be bound by the following admission made in its proposed findings of fact dated September 26, 1974, which its counsel reaffirmed both in discussions with plaintiffs on October



3, 1974, and during a conference with the Court on October 4, 1974:

> About 4½% of the persons certified to the TA by the Civil Service Commission of the City of New York as eligible for employment are not employed because of present illicit drug use or a history of such use. (TA proposed finding No. 21 of September 26, 1974 proposed findings).

• • • • •

18. Plaintiffs and the TA are agreed on the following finding:

> The TA has never studied the requirements of particular TA jobs or groups of jobs to determine the present ability of persons with a prior history of drug abuse, including persons participating in methadone maintenance programs, to perform the various jobs.

Plaintiffs have proposed the following additional finding to which the City defendants have agreed and as to which the TA has not indicated its position:

> No other person or organization including the New York City Civil Service Commission or the New York City Department of Personnel has ever studied the requirements of particular TA jobs or groups of jobs specifically to determine the present ability of persons with a prior history of drug abuse, including persons participating in methadone maintenance treatment programs, to perform the various jobs.

• • • • •

19. Plaintiffs and the TA are agreed on the following finding:

> The TA has not made any studies to determine the job performance of TA employees with prior histories of drug abuse, including employees participating in methadone maintenance programs.

In addition, plaintiffs have proposed the following finding to which the City defendants have agreed and as to which the TA has not indicated its position:

> No other person or organization, including the New York City Civil Service Commission or the New York City Department of Personnel has made any studies to determine the job performance of TA employees with prior histories of drug abuse including employees participating in methadone maintenance treatment programs.

• • • • •

21. Plaintiffs and the TA are agreed on the following findings:

> The following physicians who are experts in the field of drug treatment were consulted by the TA with respect to the employability of persons with prior histories of drug abuse, including persons participating in methadone maintenance treatment programs:
>
> a. Dr. Harvey Gollance, Director of the Beth Israel Medical Center, has told officers and employees of the TA, including defendant Louis Lanzetta, the Medical Director, and defendant Wilbur McLaren, the Executive Officer for Labor Relations and Personnel, that in



> his opinion some methadone maintenance treatment program participants are qualified to be TA employees in some positions.
>
> • • • • •
>
> b. Dr. Harold Trigg, Chief of the Methadone Maintenance and Drug Addiction Services at the Beth Israel Medical Center, Associate Professor of Clinical Psychiatry at Mt. Sinai School of Medicine, and special consultant to the TA on drug abuse, has told officers and employees of the TA including defendant Louis Lanzetta, the Medical Director, and defendant Wilbur McLaren, the Executive Officer for Personnel, that in his opinion some methadone maintenance treatment participants are qualified to be TA employees in some positions, and that he would be willing to screen methadone maintenance program participants to find persons suited for TA employment and help the TA devise a system to monitor the performance of these individuals. Dr. Trigg specifically recommended to the TA that it employ plaintiff Diaz.
>
> • • • • •
>
> c. Dr. Vincent Dole, Professor of Medicine at the Rockefeller University and Senior Physician to the Rockefeller University Hospital, has told officers and employees of the TA, including Louis Lanzetta, the Medical Director, and Wilbur McLaren, the Executive Officer for Labor Relations and Personnel, that in his opinion some methadone maintenance treatment program participants are qualified to be TA employees in some positions.
>
> • • • • •

*Compilation of the Agreed to and Contested Facts*

22. Plaintiffs and the TA are agreed on the following finding:

> According to the testimony of responsible TA officials, the TA has never had an accident found to be caused by drug use on the part of a TA employee, or to have been caused by a TA employee who was a person with a prior history of drug abuse or a participant in a methadone maintenance program.

• • • • •

The TA has submitted the following additional proposed finding:

> Instances have occurred, including one on August 19, 1974, where a conductor, later found to be using heroin, opened the doors of a train on the wrong side, and another on 8/1/73 when a passenger was struck by a train and became wedged between the platform and one of the cars. The train was operated by a motorman found to be using cocaine.

Plaintiffs have no information with respect to defendants' additional proposal, because of defendants' failure to make complete discovery.

In addition, plaintiffs have proposed the following finding:

> With respect to the "instances" referred to by defendants, there was no indication whatsoever that the employees involved were drug-free former addicts or successful participants in duly licensed and authorized methadone maintenance treatment programs.



*Compilation of the Agreed to and Contested Facts*

23. Plaintiffs and the TA are agreed on the following finding:

> One of the reasons for the TA drug policy is the fact that the TA feels an adverse public reaction would result if it were generally known that the TA employed persons with a prior history of drug abuse, including persons participating in methadone maintenance programs.

B. Relationship To City Policy

24. Plaintiffs proposed the following findings:

> On the basis of a study of the employability of ex-addicts, the New York City Department of Personnel and the New York City Civil Service Commission promulgated the following policy on the employment in mayoral agencies of ex-addicts:
>
> > A history of drug addiction shall not in itself constitute a bar to employment in any City position except [in the uniformed services].
>
> Accordingly, "drug-free former addicts" and persons "successfully participating in recognized chemotherapeutic treatment programs" such as methadone maintenance are fully eligible for employment in all positions in the mayoral agencies, and are to be considered for such employment on the same basis as other persons. Furthermore, drug-free former addicts and persons participating in duly licensed and authorized methadone maintenance treatment programs are not in fact absolutely excluded for all positions of employment in the uniformed services.

While the TA has admitted only that the policy was promulgated, it has not denied the other propositions contained in the above. In any event, since the City has agreed to the above propositions in their entirety, and the matters are clearly within the City's knowledge, they must be accepted as beyond dispute.

The City defendants have additionally proposed the following finding to which plaintiffs have agreed and the TA has indicated no position:

> Persons hired pursuant to the City's policy with respect to the employment of former addicts are not separately monitored by the Civil Service Commission and Department of Personnel in their job performance and in the fact are wholly integrated into the work force.

• • • • •

25. Plaintiffs and the TA have agreed to the following findings:

> "City-wide titles" of employment are used to designate those job positions in which civil service employees perform essentially the same tasks regardless of the specific governmental agency in which they are employed. Examples of city-wide titles are secretary, stenographer, clerk and motor vehicle operator. About 3,400 of the TA workforce of 42,500 are in city-wide titles.

• • • • •



C. Administration of the TA Drug Policy

26. Plaintiffs and the TA are agreed on the following finding:

> The TA policy with respect to the employment of former drug abusers is administered by means of a program, initiated in 1970, under which medical examinations, including urine analyses, designed to detect the use of drugs, are administered on a periodic basis to some TA employees and applicants for employment
>
> a. All prospective employees under age 35 are given drug-detection urinalyses as part of their pre-employment medical examination.
>
> • • • • •
>
> b. Bus operators, conductors and motormen are physically examined every 2 years if under 50 years of age and every year if over 50 years of age. Towermen and Surface Line Dispatchers are examined every 5 years. If under 35 years of age all are given drug-detection urinalyses at the time of their physical examinations.
>
> • • • • •
>
> c. All TA employees under age 35 are given drug-detection urinalyses as part of promotional medical examinations required by the TA.
>
> Other than the above mentioned examinations, TA employees and prospective employees are not routinely examined for symptoms of drug abuse, although any department in the TA may require a TA employee to

undergo a physical examination at any time if such is indicated.

27. Plaintiffs and the TA are agreed on the following finding:

> TA employees showing physical manifestations of drug abuse other than the definite presence of morphine or methadone or other illicit drug in the urine, are referred for consultation to Dr. Harold Trigg of Beth Israel Medical Center, who reports his impression to the TA whether the individual is abusing or has abused drugs. The TA accepts Dr. Trigg's impression of the case.

• • • • •

The TA has submitted the following finding:

> Prospective employees are generally not referred to Dr. Trigg, except in some situations where marijuana or prior drug use is suspected or admitted.

Plaintiffs agree that this was true in the past, but submit the following finding:

> Since the summer of 1974, prospective TA employees showing physical manifestations of drug abuse other than the definite presence of morphine or methadone or other illicit drug in the urine have also been referred for similar consultation with Dr. Trigg.

Dr. Trigg admitted this fact in a conversation with plaintiffs' counsel on October 11, 1974.



## IV. Nature of TA Employment

### A. Overview

28. Plaintiffs and the TA are agreed on the following findings:

> The TA employs about 40,000 persons in both operating and non-operating positions (exclusive of the transit police). MaBSTOA employs about 6,500 persons. The TA hires about 2,500 new employees annually and MaBSTOA about 500.

Beyond this there is no agreement. Plaintiffs have submitted the following finding:

> The TA employs large numbers of both operating and non-operating personnel who perform widely varied but typical industrial and office keeping tasks such as clerical, secretarial, maintenance, and mechanical work.

In support plaintiffs submit the list of job titles in the TA furnished to plaintiffs by the TA defendants which reveals that the TA employs large numbers of persons in such titles as account clerk (25 persons); administrative assistant (97 persons); assistant civil engineer (207 persons); attorney (22 persons); bookkeeping machine operator (9 persons); car cleaners (955 persons); cashier (106 persons); civil engineer draftsman (27 persons); claim examiner (33 persons); clerk (563 persons); collecting agent (145 persons); electrical engineering draftsman (47 persons); junior engineers (99 persons); keypunch operator (57 persons); messenger (12 persons); police

administrative aid (30 persons); railroad clerk (cashier) (4,414 persons); railroad porter (janitor) (1,162 persons); senior clerk (286 persons); stenographer (93 persons); telephone operator (39 persons); turnstile maintainer (141 persons). See PX 12.

• • • • •

30. Plaintiffs have submitted the following proposed finding as to which the TA has not agreed:

> TA job positions vary widely with respect to the potential safety impact on the riding public of TA employees of improper performance by persons in those positions. Approximately 75 percent of all TA jobs are not directly related to the safety of passengers or TA employees, and about half of all TA jobs do not involve direct dealings with the public or the technical or mechanical operations of trains.

In support of this see generally No. 28, *supra*. In addition Plaintiffs submit the following:

Defendant McLaren specifically admitted that no more than *half* of the jobs *on* TA property (thus excluding various clerical, maintenance and other off-property jobs) were related to passengers' safety or to other employees' safety, noting as specific examples of non-safety-related or "non-critical" positions the following: car maintainers, car cleaners, railroad clerks and railroad porters (indicating that of course there might be certain specific jobs within these titles that could involve more critical work) McLaren Dep. II TR 135-37. Thus when the off-property jobs are taken into account it is clear from McLaren's own admissions that well over half the jobs with the TA are not safety-related.



McLaren further admitted in discussing the categories of persons to whom periodic physicals were given (limited to: bus operators, conductors and motormen who receive exams every 2 years; towermen and surface line dispatchers who receive exams every 5 years) that the degree of safety sensitivity was a criterion in determining the categories (McLaren Dep. I TR 51-52). He did indicate that he felt the periodics should be expanded to other groups but only to those "working around the tracks or in controlling or directing our equipment" (McLaren Dep. I TR 52). He testified that roughly one-third of the employees *in TA titles* were now covered by the periodics and that if periodics were extended to all the titles he felt should be covered only about one-half the employees *in TA titles* would be covered (McLaren Dep. TR 58). He clearly admitted that city-wide titles did not involve safety:

> "Q. Are any periodic medical examinations given to any persons in City wide titles?
>
> A. No. They are only given to those involved in critical jobs effecting the safety and service of our system." (McLaren Dep. I 51)*

The TA's policies regarding alcohol, diabetes, epilepsy and physical disabilities, as well as use of such drugs as amphetamines (see generally proposed and agreed to findings Nos. 44-57, *infra*, and plaintiffs' supporting documentation) demonstrate conclusively that the TA has concluded

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* Lanzetta testified that with regard to medical conditions other than drug use the TA applied a "more lax" medical standard in screening persons for city-wide titles (Dep. TR 94-95).

that TA job positions vary widely with respect to the potential safety impact on the riding public or TA employees of improper performance by persons in these positions.

Warren, the Director of the TA's alcoholism program, testified that alcoholics might be transferred to, for example, platform conductor positions because a platform conductor "is not in a position here to jeopardize the safety of our passengers . . ." (Dep. TR 18-19). As examples of other non-critical positions he mentioned: maintenance shop positions, railroad clerks, railroad porters, caretakers, watchmen, ventilation and drainage maintainers, turnstile maintainers (Dep. TR 19). See also Warren Dep. TR 59-60. He stated that none of the clerical jobs would be considered critical (Dep. TR 19). (See also testimony supporting proposed finding 44-46, indicating that epileptics and diabetics are allowed to fill these kinds of positions even if their medical conditions are severe; if their conditions are under control they may hold any TA position.)

Warren testified that for purposes of the alcoholic program about 60 percent of jobs in TA titles might be considered critical and 40 percent non-critical (Dep. TR 59), and subsequently testified that by critical he meant any position which might involve "a possible threat to the riding public" or "where his drinking may be a dangerous situation to his fellow employees . . ." (Dep. TR 70).

Moreover, Warren testified that graduates of his program had successfully been employed in "every position in the Authority," including that of Towerman (Dep. TR 27) and positions dealing with high voltage (*ibid.*). He testified that alcoholics in positions such as motorman and trainmaster had participated in his program on a confidential basis (Dep. TR 27-29). See also Warren Dep. TR 57.



Ronan testified that he had had no reasons to conclude that the alcoholism program endangered the riding public and, indeed, that it had received general commendation (Ronan Dep. TR 12-14).

McLaren similarly testified that it was a "very good operation" (Dep. I TR 23).

Two members of the Transit Authority Board, defendants Lawrence R. Bailey and Justin N. Feldman, testified that TA titles varied widely with respect to safety considerations and that not all were safety-related (Bailey Dep. TR 7-8; Feldman Dep. TR 17-18).

• • • • •

B. Hiring Procedures

32. Plaintiffs and the TA are agreed on the following finding:

> TA employees are hired on the basis of a competitive written examination, medical examination and personal interview. Although the written examination is officially prepared by the Civil Service Commission, the TA contributes both money and personnel to the Commission for such preparation and consults with the Commission with respect to the examination. A prospective TA employee is not called down for a medical examination and interview until he has been notified that he has passed the written examination.

Plaintiffs have additionally proposed the following finding to which TA defendants have not agreed but to which

City defendants (who have the responsibility for giving examinations) have agreed:

> Examinations for the TA job titles that have the greatest number of employees may be given as frequently as once a year. (See Shanen Dep. TR 29)

33. Plaintiffs and the TA are agreed on the following finding:

> The individual medical standards for employment in TA titles are prepared and promulgated by the Civil Service Commission. The TA is customarily consulted in this matter by the Commission.

Plaintiffs have proposed the additional finding as to which the TA does not agree (but the City does):

> The general medical standards for TA employment in TA titles are prepared by the TA and submitted to the Civil Service Commission, which officially promulgates them.

• • • • •

The City has agreed . . . that:

> No study of former addicts including persons maintained on methadone has been conducted to determine their ability to perform the specific duties associated with TA titles of employment.

Plaintiffs have also submitted the following proposed finding:

> In connection with the instant litigation the City defendants indicated that they were prepared to initiate a



> study which would for the first time have assessed the nature of the various TA positions with a view toward determining the ability of methadone maintained former drug addicts to perform in the different positions. Such a study has not in fact been commenced.

C. Disciplinary Procedures

39. Plaintiffs and the TA are agreed on the following finding:

> No TA employee covered by § 75 of the New York Civil Service Law can be dismissed or suspended from his position without a hearing, which may take place either within a TA department or before an official TA trial board. Both hearing bodies may impose sanctions ranging from an informal "warning" or "caution" to a formal written "reprimand" to suspension. No more than a three day suspension may be imposed at a Departmental Hearing, while longer suspensions and dismissals may be imposed at a Trial Board Hearing. Decisions of TA hearing bodies are either accepted, modified or rejected by the TA's Executive Officer for Labor Relations and Personnel.

40. Plaintiffs and the TA are agreed on the following finding:

> A TA employee may be "warned" or "cautioned" by his department without any hearing procedure. A TA employee can remain in good standing even if he has some "warnings" or "cautions" in his record.

• • • • •

41. Plaintiffs and the TA have agreed to the following finding:

> Decisions resulting from the TA Trial Board may be appealed to an "Impartial Review Board" made up of representatives of the TA and the Transport Workers Union. The Impartial Review Board may recommend to the Executive Officer for Labor Relations and Personnel how he should exercise his power to accept, modify or reject those decisions.

42. Plaintiffs and the TA have agreed to the following finding:

> Actions of the Executive Officer for Labor Relations and Personnel may be appealed to City Civil Service Commission, or, alternately, to the courts.

• • • • •

D. Policy With Respect To Physical Disabilities and Alcoholism

*44-46. Physical Disabilities*

• • • • •

45. Plaintiffs and the TA are agreed on the following finding:

> The TA does not maintain a blanket rule barring the hiring in any capacity of persons with a history of diabetes, epilepsy or heart disease. Instead, it is the policy of the TA to consider the hiring of such persons on an individual basis in light of such factors as their actual performance capabilities and the safety sensitivity of the job to which they seek appointment.





> Diabetics, epileptics and persons with heart disease have been knowingly hired by the TA.

46. Plaintiffs have proposed the following finding:

> Persons who have been employed by the TA for over 2 years and who are discovered for the first time to have diabetes, epilepsy or heart disease are continued in TA employment. The TA makes an individual assessment of their actual performance capabilities to determine in which TA positions they are capable of performing without impairing the safety of the riding public or other TA employees. In accord with their capabilities, such persons are then allowed to retain their current position of employment or to transfer to a less sensitive position or a light duty position. While assignment to light duty theoretically depends on the availability of light duty positions, no person has ever been discharged from TA employment due to diabetes, epilepsy or heart disease due to the unavailability of such positions.

The TA has agreed with the following exception:

> Transfer to a less sensitive or light duty position is only made when a vacancy is available.

Plaintiffs do not agree to the above and have proposed the following additional finding:

> There are sufficient vacancies on a regular basis to allow for the re-assignment of persons suffering from diabetes, epilepsy or heart disease to light duty positions.

• • • • •

*47-56. Alcoholism Policy*

• • • • •

48. Plaintiffs and the TA have agreed to the following finding:

> The TA does not maintain a blanket rule barring the hiring in any capacity of persons with a prior history of alcoholism. Instead, it is the policy of the TA to consider the hiring of such persons on an individual basis in light of factors such as their rehabilitation and the safety sensitivity of the job to which they seek appointment. Persons with prior histories of alcoholism have been knowingly hired by the TA.

*49-51.*

49. Plaintiffs and the TA have agreed to the following finding:

> Rule 11(a) of the TA Rules and Regulations prohibits TA employees from drinking alcoholic beverages during their tours of duty or at any time to an extent making them unfit to report for duty or to be on duty. Violation of Rule 11(a) does not, however, result in automatic dismissal from the TA's employ, even if the offending employee is an alcoholic. If a TA employee is accused by a supervisor of being in violation of Rule 11(a), he is subjected to disciplinary proceedings, the nature of which relates to the safety sensitivity of the job position that he holds.

Plaintiffs have submitted the following findings 50-51:

> 50. Persons in job positions that do not directly relate to passenger or employee safety face proceedings



> at the Departmental level for a first violation of Rule 11(a). The maximum penalty that can result after such proceedings is a three day suspension from duty. Persons disciplined at the Departmental level for violation of Rule 11(a) are customarily allowed to remain in their job positions. Approximately 60% of the TA's job positions are considered non-safety sensitive for the purposes of enforcing Rule 11(a).
>
> 51. Persons in job positions that relate directly to passenger or employee safety face proceedings at a Trial Board level for a first violation of Rule 11(a). Persons who have previously been disciplined at the Departmental level for violating Rule 11(a) may also be summoned before the Trial Board for subsequent violations. Although the Trial Board may impose dismissal from TA employment as a penalty for violating Rule 11(a) it rarely does so the first time Rule 11(a) violators appear before it. Even in those instances when the Trial Board determines that the severe penalty of dismissal is warranted, that penalty is usually held in abeyance pending an opportunity for the offending employee to participate in the TA Employee Counseling Service. Persons in safety sensitive positions who have been summoned before the Trial Board for violating Rule 11(a) are usually required to accept a demotion to a non-safety position as a condition of continued TA employment.

The TA has indicated substantial agreement with plaintiffs' proposed 50-51 in its proposed counter-finding No. 49. Plaintiffs agree with the TA's proposed counter-find-

ing only insofar as set forth below and only with the additions and qualifications bracketed below.

> A violation of Rule 11(a) of the TA's rules prohibiting employees from drinking alcoholic beverages during their tour of duty or at any time to an extent making them unfit to report for or be on duty [may] result in disciplinary action against the employee, including [, in some instances] suspension and dismissal.
>
> If such an employee has less than three years of service and holds a [safety sensitive] position in which he is directly engaged in operations, such as Motorman, Conductor or Bus Operator, he [may] be dismissed. If he holds a position [that does not relate directly to passenger or employee safety] a hearing [may] be given him either at the departmental level or trial board level, depending on all the circumstances of the case, and discipline may be imposed including [in some instances] suspension and dismissal.
>
> If the employee violating Rule 11(a) has more than three years of service and holds an operating position, he [may] be demoted from that position. If he holds a non-[safety sensitive] position, he [may] be given a hearing at either the departmental level or trial board level, depending upon all of the circumstances of his case, and is subject to discipline, but less than dismissal for a first offender.
>
> [Persons in job positions that do not directly relate to passenger or employee safety face proceedings at the Departmental level for a first violation of Rule 11(a). The maximum penalty that can result after such proceedings is a three day suspension from duty. Persons disciplined at the Departmental level for violation of Rule 11(a) are customarily allowed to remain in their job positions. Approximately 60% of the TA's job positions are considered non-safety sensitive for the purposes of enforcing Rule 11(a).]
>
> In addition to discipline [an] employee [found in violation of Rule 11(a)] [may] be referred by his department to the TA's Employee Counselling Service, which provides counselling and other aid to employees who have drinking problems. An employee may also voluntarily seek such services. If he has a problem, he is invited to participate in the services of the program, including regular reporting and faithful participation in an established AA program not conducted by the TA. In a few cases depending on the circumstances the disciplinary penalty that is imposed for the violation, except demotion in the case of operating employees, may be reserved by the Hearing Officer contingent upon the employee's continued cooperation with the counselling service. [The disciplinary penalty held in reserve may include as severe a penalty as dismissal.]



• • • • •

52. Plaintiffs and the TA are agreed to the following findings:

> The Employee Counseling Service is an organization that has existed for over 18 years within the TA to

provide assistance for problem drinkers employed by the TA. All persons found in violation of Rule 11(a) are referred to the Counseling Service. If the Service determines that persons referred to it have alcoholism problems, they are invited to participate in the Service's program. That program requires consistent attendance at a specified number of Alcoholics Anonymous meetings, as well as regular reporting to the Counseling Service. The success rate of the TA Employee Counseling Service Program is only approximately 60%, since some participants have relapses into drinking and some employees referred to the program drop out or refuse to participate. Nevertheless, persons who do not succeed in the TA Employee Counseling Program are allowed to continue in the employ of the TA as long as their on-the-job performance remains adequate. The TA makes no inquiry into its employees' use of alcohol off the job as long as such use does not impair their functional capabilities during their tour of duty with the TA.*

Employees not remaining in the program are not for that reason subject to any discipline.

53. *Plaintiffs and the TA are agreed on the following finding:*

*TA employees who have not been found to have been in violation of Rule 11(a), but who have problems with*

* Thus McLaren testified specifically that the TA made no attempt to screen its workforce to determine whether persons had drinking problems but, rather, looked solely to job performance. McLaren Dep. II TR 142.



*alcoholism, may enroll in the Employee Counseling Service on a confidential basis. Such enrollment is not reported to the employees' supervisors, and they are not required to accept a demotion in position, even if their current position is safety sensitive. Persons have enrolled in the Counseling Service on a confidential basis while serving in such highly sensitive positions as motormen, towermen, dispatchers, and trainmasters.*

• • • • •

54. Plaintiffs and the TA are agreed on the following finding:

About 20% of the persons participating in its alcoholism program are doing so on a voluntary and confidential basis.

• • • • •

55. Plaintiffs submitted the following proposed finding:

A TA employee who has been demoted due to an alcoholism problem and violation of Rule 11(a) is generally eligible for restoration to a safety sensitive position after three years of successful participation in the Counseling Service Program. In exceptional cases the three year requirement may be waived. Over the years substantial numbers of persons from the Counseling Service Program have been restored to safety sensitive positions. Many of these persons have been eligible for and received subsequent promotions.

The TA has not agreed with this in its entirety but has agreed to the following which is included within plaintiffs' proposed finding:

An employee demoted for a violation of Rule 11(a) may be restored to an operating position after three years of full cooperation with the counseling service.

• • • • •

57. Plaintiffs and the TA are agreed on the following finding:

Some employees who may be taking amphetamines under the supervision of and prescribed by a physician may continue to do so with the written permission of the medical director depending upon all the circumstances.

• • • • •

VII. Racial Impact

*69-71*

There is no agreement between plaintiffs and the TA as to Nos. 69-71. Plaintiffs' proposed findings are set forth below:

69. The population of former drug abusers in the New York Standard Metropolitan Statistical Area contains a substantially and significantly greater proportion of Blacks and Hispanics than the civilian workforce at large for the New York Standard Metropolitan Statistical Area. Hence, the probability of a Black or a Hispanic person being denied employment by the TA on the basis of its policy respecting the employment of former drug abusers is substantially and significantly higher than the same probability for his white counterpart.



70. The population of former drug abusers who have been dismissed by the TA on the basis of its policy respecting the employment of former drug abusers have been overwhelmingly Black and Hispanic, and disproportionately Black and Hispanic as compared with the racial and ethnic composition of the general TA workforce. The population of former drug abusers now working for the TA who will be dismissed upon discovery by the TA on the basis of its policy respecting the employment of former drug abusers is overwhelmingly Black and Hispanic, and disproportionately Black and Hispanic as compared with the racial and ethnic composition of the general TA workforce. Hence, the probability of a Black or Hispanic TA employee being dismissed from TA employment on the basis of the TA's policy with respect to the employment of former drug abusers is substantially and significantly higher than his white counterpart.

71. The TA's policy with respect to the employment of former drug abusers has a significant and substantial discrimination impact upon Black and Hispanic persons otherwise eligible to commence employment with the TA or to continue in its employ.

In support of the above proposed findings Nos. 69-71, plaintiffs have submitted the following findings 71(a)-(c), as to which the TA has not indicated its position.

71(a). The racial breakdown of TA employees referred to Dr. Trigg pursuant to the arrangement described in paragraph 27, *supra*, is as follows:

| | |
|---|---|
| Black | 72.2% |
| Hispanic | 9.3% |
| White | 18.5% |

(In support, plaintiffs submit herewith PX 20.)

71(b). Statistics available from the United States Department of Commerce, Bureau of the Census indicate that the civilian workforce* for the New York Standard Metropolitan Statistical Area** is approximately 15.0% Black and 5.1% Hispanic.† The racial composition of this population can be assumed to approximate the racial composition of the population eligible for employment with the TA and MaBSTOA save for their policy of excluding all present and past methadone maintenance program participants.

71(c). The methadone maintenance population, essentially a sub-group of the civilian workforce, is approximately 38.5% Black and 22.5% Hispanic.†† It has been

* "Civilian workforce" is defined by the Bureau of the Census to include all non-military persons who are either employed, or looking for and available to accept employment.

** "Standard Metropolitan Statistical Area" (SMSA) is a designation utilized by the Bureau of the Census. Counties contiguous to a county or counties containing a city of 50,000 persons or more are included in a SMSA if, according to criteria established by the Bureau of the Census, they are socially and economically integrated with the central city. The New York SMSA includes New York City and Westchester, Rockland, Nassau and Suffolk Counties. It comprises the area from which the TA and MaBSTOA can reasonably be expected to draw their 49,000-51,000 employees.

† See 1970 Census of Population, Vol. 1—Characteristics of the Population, Part 34—New York, Section 2 Tables 164 and 165.

†† Records regarding the ethnic composition of the methadone maintenance population are maintained by the Rockefeller University Methadone Information Center. Under contract to the New York State Drug Addiction Control Commission, the center is responsible for gathering extensive information concerning methadone maintenance in the New York City metropolitan area. In a letter dated August 27, 1974, addressed to counsel for plaintiffs a responsible official of the Center confirmed the racial/ethnic composition of the methadone maintenance population. See PX 21.



reliably estimated that active heroin addicts are 60-70% Black or Hispanic.*

In further support of proposed findings 69-71, plaintiffs submit Dr. Lanzetta's testimony that approximately 75-80% of the persons dismissed from TA employment because of drug use were Black or Hispanic (Lanzetta Dep. TR 79-80), and that, while he was uncertain as to the racial percentages of applicants denied TA employment because of drug use he was certain that the majority were Black or Hispanic (Dep. TR 84).

These statistics together with the statistics cited *supra*, paras. 71(a)-(c), constitute the best statistics currently available to plaintiffs on the actual impact of the TA's drug policy on plaintiffs' class because of defendant TA's refusal to respond to plaintiffs' requests on discovery for *either*:

(1) The exact racial statistics on TA applicants and employees denied or dismissed from employment for drug-related reasons; or

(2) The records of TA applicants and employees denied or dismissed from employment for drug-related reasons. These records would have permitted

* See *Dealing With Drug Abuse, A Report to the Ford Foundation*, 4 (Praeger 1972).

plaintiffs to compile the exact racial statistics. However the TA refused to produce those records (even with names and other identifying information deleted) and, on plaintiffs' motion for sanctions and to compel discovery, the Court ruled that the TA was not required to produce the records (Nov. 16, 1973 hearing, TR 30-32).

• • • • •

## IX. Named Plaintiffs

While the TA has indicated a good deal of agreement with plaintiffs' proposed findings No. 74-110 & 116, plaintiffs also proposed a large amount of material not agreed to by the TA. Accordingly, plaintiffs agree with each of the TA's proposed counter-findings only insofar as set forth below and only with the additions and qualifications bracketed below:

74-87. The plaintiffs Carl A. Beazer, a Black born January 17, 1935, was first employed by the TA as a Car Cleaner on May 1, 1960 and on March 1, 1961 was appointed provisionally a Conductor, which appointment was made permanent on October 1, 1962. [The appointment as Conductor was a promotion based on an assessment of his record, together with his performance on written and practical exams designed to test a candidate's ability to perform the duties of the position being tested for.] On May 15, 1966, he was [similarly] promoted to the position of Towerman. On or about August 30, 1971 the United States Veterans Administration [in response to a routine request for hospital records and in violation of federal law] reported to the TA that Beazer was a participant in a methadone maintenance treatment program conducted by the VA. He was suspended from duty on September 1, 1971 and on October 4, 1971 was served with disciplinary charges pursuant to § 75 of the Civil Service Law of the State of New York. It was specified that he had violated TA Rule 11(b) which prohibits the use or possession of certain drugs by employees, including narcotic drugs, without the written permission of the Medical Director. A hearing of the charges was held in November, 1971 and on November 26, 1971 the Hearing Referee recommended that the charges be sustained and that Beazer be dismissed from service effective that day. At the hearing, Beazer admitted his participation in a methadone maintenance treatment program and also his use of heroin while employed by the TA as a Towerman, but urged that his employment record warranted a penalty less than dismissal. In recommending dismissal the Hearing Referee noted that Beazer's disciplinary record included 8 Cautions and 3 Warnings for violations, 5 of which were functional. As of June 20, 1971, Beazer had a sick leave balance of 0 days out of a possible 144 accumulated at the rate of 12 days per year for each year of service. [The Hearing Referee did not rely on Beazer's disciplinary record. Beazer's work performance during the entire period he was employed by the TA was entirely competent as noted by the Impartial Review Board. PX 5. Beazer's dismissal was predicated solely on the TA's policy with respect to the employment of former drug abusers.

See Decision of Hearing Referee Daniel Gutman, dated November 26, 1971. A TA employee can remain in good standing even if he has some "warnings" or "cautions" in his record, and, in fact, most TA employees eventually accumulate a number of "warnings" or "cautions" in their record.]

Beazer appealed the recommendation of dismissal to the TA's Impartial Disciplinary Review Board, composed of 3 members, one a representative of the TA, one a representative of the Transport Workers Union and the third member and also chairman, Samuel R. Pierce, Esq., former Justice of the General Sessions Court of the County of New York. The board in its "Opinion and Recommendation" noted that "[f]rom all the evidence presented, it would appear that Mr. Beazer handled his job competently while participating in the methadone program."

Based solely on the TA's rules and past practice [by which it felt bound], the board recommended his dismissal [but] also [strongly] recommended that the Union and the TA reconsider the rules relating to drug usage and recommended that Beazer be re-employed "if it is found that an employee using methadone can work in some capacity for the TA." [The Board especially urged the TA examine the merits of methadone treatment.] On August 15, 1972, the TA acting by the defendant W. B. McLaren, Executive Officer, Labor Relations and Personnel, adopted the recommendation of the Hearing Referee which had been approved by the Review Board and dismissed Beazer from its employ effective November



26, 1971. [The opinion of the Impartial Disciplinary Review Board has been marked as PX 5.]

The Hearing Referee in his opinion stated that there was "credible evidence" that Beazer was "adhering" to the requirements of the methadone maintenance treatment program in which he was participating, [and noted that he was described as an "excellent patient"]. The Hearing Referee also said that, in his opinion, that while "employment in gainful occupation is important to the Methadone patient . . . [e]mployment should be sought out and provided, but not in the service of a public agency which has the responsibility of running a railroad with operations of the size and magnitude of the Transit Authority."

Beazer was a heroin addict for 15 years prior to his entry into the VA methadone program and had been detoxified [in short term programs] 5 times; twice at Beth Israel Hospital, once at Interfaith Hospital, and twice at Harlem Hospital, and on each occasion returned to the use of narcotic drugs within a short period of time. [Beazer had never been maintained on methadone or enrolled in a methadone maintenance treatment program prior to his entry into the Veterans Administration Methadone Maintenance Treatment Program, where as noted by the Hearing Examiner, he was an excellent patient. For more than 3 years Beazer has been completely free from illicit drug use.] Beazer's successful record of participation in the Veterans Administration Methadone Maintenance Treatment Program is illustrated by VA Hospital records, including his urinalysis records

and a "Patient Report Summary" prepared by his Rehabilitation Counselor. PX 22.

[After his dismissal from the TA, plaintiff Beazer continued his excellent record of participation in the Veterans Administration program, and in November, 1973, he ceased methadone maintenance after a gradual process of detoxification. Since his detoxification, plaintiff Beazer has voluntarily continued to attend the Veterans Administration program for periodic counseling. During this attendance he has voluntarily given urine specimens which have been analyzed for evidence of drug abuse and have invaribly shown the complete absence of such abuse.

Following Beazer's suspension by the TA, he was employed by the Veterans Administration until November of 1972 in their drug detoxification program as a rehabilitation technician counselor, providing individual counseling to persons enrolled in that program and group counseling to the families of such persons. Plaintiff Beazer voluntarily left his position at the Veterans Administration with a record of having consistently performed the duties of his position in an entirely competent fashion.

In November, 1972, plaintiff Beazer was employed by the Addiction Research and Treatment Corporation as an Intake Supervisor. The Addiction Research and Treatment Corporation conducts various treatment and research programs related to drug abuse. In fulfillment of his duties to the Addiction Research and Treatment Corporation, plaintiff Beazer was responsible for keeping records and performing other



functions relating to the admission of persons to the Corporation's drug treatment programs.

In July, 1973, plaintiff Beazer voluntarily left the employ of the Addiction Research and Treatment Corporation where his job performance was at all times entirely competent and commenced employment with the Wildcat Service Corporation where he continues to be employed at the present time. Plaintiff Beazer's original position at the Wildcat Service Corporation was one of supervisor, from which he was promoted to Deputy Division Chief and then to Acting Division Chief. As Acting Division Chief, Beazer is responsible for assisting in the supervision of approximately 130 workers performing maintenance work under contract to various agencies of the City of New York, including the Police and Fire Departments.

Notwithstanding his excellent employment record subsequent to his dismissal by the TA, plaintiff Beazer has earned considerably less in the past two years than he would have had he been retained in the TA's employ.]

88-92. The plaintiff Francisco Diaz, an Hispanic was born November 20, 1934. On December 3, 1968, he was admitted to a methadone maintenance treatment program conducted by the Beth Israel Medical Center, with a history of using heroin for 18 years. On February 28, 1970 he took a written examination conducted by the City Civil Service Commission for the position of Maintainer's Helper—Group D with the TA. He passed the examination and was called for preappointment processing on June 5, 1970. He in-

formed the Medical Department that he was a participant in a methadone maintenance treatment program.

A letter dated June 5, 1970, was sent to the City Department of Personnel by Dr. Harold L. Trigg, a psychiatrist and Associate Director of the Bernstein Institute (who in 1972 became a drug abuse consultant to the TA), stating that Diaz was an "excellent patient and [was] totally free of illicit drug use." (PX 23) He recommended his employment as a Maintainer's Helper. Diaz was passed over for appointment as a Maintainer's Helper [solely as a result of the TA's policy with respect to the employment of former drug abusers.

Diaz's TA medical record is stamped "med. rej." and "rejected by Doctor." His TA Medical Department form bears the following notation under "diagnoses" "attends methadone clinic." PX 19.] Subsequently, Diaz appealed to the Commission which [dicmissed] the appeal on September 22, 1970.

Prior to his entry into the Beth Israel Methadone Maintenance Program in February 1968, Diaz had been detoxified of drugs [in short term programs] 4 times in the period between 1952 and 1968. Three of such detoxifications took place at Riverside Hospital and one at the Federal Drug Facility then at Lexington, Kentucky. On each of the 4 occasions after being detoxified he returned to using drugs. [Diaz had never been maintained on methadone or enrolled in a methadone maintenance treatment program prior to his entry into



the Beth Israel methadone maintenance treatment program, where he was and is an excellent patient. For approximately 5 years Diaz has been free from illicit drug use.]

[Plaintiff Diaz was employed as a sheet metal mechanic from 1962 to 1973. He is currently employed as a helper in a commercial bakery. In both of these positions Diaz has consistently performed competently and satisfactorily. Nevertheless, Diaz has earned considerably less in the last four years than he would have had he been hired by the TA.]

93-100. The plaintiff Malcolm Frasier is Black and was born on March 23, 1944. In February 1971, he sought employment as a Bus Operator with MaBSTOA after having taken and successfully passed a written examination therefor. During pre-appointment processing MaBSTOA learned not from Frasier but from the Motor Vehicle Bureau that his motor vehicle operator's license had been suspended on January 14, 1971 for failing to answer a traffic summons. Frasier was not appointed. [Frasier had not received notice from the Motor Vehicle Bureau at the time of his pre-appointment processing that his licenses had been suspended. This incident was not the basis for his subsequent disqualifications by the TA which are the subject of this lawsuit.]

In October 1972, Frasier entered a methadone maintenance program sponsored by the Mary Scranton Foundation. He left the program detoxified on March 19, 1973. Prior thereto he had passed a second written examination for the position of Bus Operator with

MaBSTOA and reported on March 9, 1973 for pre-appointment processing. Upon disclosing that he was a participant in a methadone maintenance program he was told by MaBSTOA personnel, including Personnel Administrator, Thomas Grainger, that he would not be appointed a bus driver. [On March 14, 1973, Grainger approved a MaBSTOA "Status Report" stating that Frasier was "rejected by Authority based on Medical findings. Applicant is presently engaged in Methadone Program. Company Policy not to hire applicants engaged in Methadone Program. PX 25.] Frasier was sent a letter dated March 14, 1973 by Mr. Grainger informing him he would not be employed because "[his] background [did] not meet the standards established for this position." Subsequently, an attorney representing him was also informed in writing that his appointment as a bus driver was not made "because of medical background based on information he divulged to [the] Medical Director."

In March, 1973, Frasier was notified by MaBSTOA that his name was or an eligible list for the position of Bus Cleaner. [On March 29, 1974, Dr. G. Salazar, Clinical Director of Frasier's methadone maintenance treatment program wrote a letter to the TA attesting to Frasier's excellent record in the program. PX 26.] Frasier reported for pre-appointment processing on April 2, 1973 and was told that he would not be appointed because of his drug history. [At the time of this processing Frasier had been completely detoxified from methadone after a two month long process of detoxification. PX 26, 27.] Later he was informed in



writing that "[his] background [did] not meet the standards established for this position."

[During the 4 year period] prior to his entry into the methadone maintenance program Frasier had used narcotics. In early 1972 he participated in a detoxification program at Joint Diseases Hospital and in June 1972 [he participated in a detoxification program] at Metropolitan Hospital. [Both of these programs were short-term detoxification programs, unrelated to methadone maintenance treatment.]

[Plaintiff Frasier has held several positions of employment over the last ten years, and in all such positions has demonstrated his ability to perform as a competent worker. Several of these positions have been as truck driver, and one has been as a taxicab driver. Since February, 1974, plaintiff Frasier has been employed as a shipping clerk and has consistently performed his duties in a competent manner.

Notwithstanding his excellent employment record, plaintiff Frasier has earned considerably less in the past year than he would have had he been hired by the TA.]

101-110. The plaintiff Jose R. Reyes, a Hispanic, was born April 26, 1945. He was first employed by the TA on April 29, 1968 as a Maintainer's Helper—Group B. On April 26, 1970 he was promoted to the position of Ventilation and Drainage Maintainer [based on an assessment of his record, together with his performance on written and practical exams designed to test a candidate's ability to perform the duties of the posi-

tion being tested for.] [On February 26, 1971 he was admitted to the Rapid Induction Unit of the Beth Israel Methadone Maintenance Treatment Program. On April 19, 1971, he was transferred to the Beth Israel Methadone Maintenance Treatment Program, at the St. Clair Hospital.] On October 12, 1971 his department referred him to the TA's Medical Department. A [medical examination and] urinalysis [were conducted but there was no conclusive evidence of drug use. PX 28. A second medical examination was scheduled for November 1, 1971.] [A] second urinalysis on [that date] showed positive for methadone [only] and [a nasal smear which would have revealed the use of cocaine or other drugs showed negative. PX 29.] Upon being questioned, Reyes stated he was a participant in a methadone maintenance treatment program. [Defendant Lanzetta told Reyes at that time that he would be suspended from duty because of that participation.] He was suspended from duty [immediately] and on December 13, 1971 disciplinary charges were preferred against him for violating the TA's [drug policy as set forth in plaintiffs' proposed finding No. 15.] A hearing of the charges was conducted on January 19, 1972. Reyes admitted he was on the program but urged that that fact should not justify his dismissal. There was testimony by a psychologist, Norman Gordon, that certain psychomotor tests administered to Reyes showed that he performed "equal to or better than others tested in the laboratory." [Dr. Gordon also testified] that ["the best test is experience with the person, that is, actual job history and how a person actually performs on the job."] He opined that Reyes



was capable of performing any job that he was "qualified for." There was also testimony that Reyes had an excellent record of participation in the methadone maintenance treatment program.

Finding [that Reyes was participating in a methadone maintenance treatment program], the Hearing Referee recommended that Reyes be dismissed from service effective January 20, 1972. In his recommendation the Referee noted that Reyes had 2 departmental disciplinary hearings during his service of less than 4 years, one in 1969 for drinking alcoholic beverages on the job, for which he was suspended one day, and 6 Cautions for poor attendance, culminating in a department hearing for such violations in 1970, for which a Reprimand was administered. [The Hearing Referee did not rely on Reyes' disciplinary record, and Reyes' dismissal was predicated solely on the TA's policy with respect to the employment of former drug abusers. A TA employee can remain in good standing even if he has some "warnings" or "cautions" in his record, and, in fact, most TA employees eventually accumulate a number of "warnings" or "cautions" in their record.]

Reyes has used hard drugs [in the past, but he has been free of drug abuse since he entered the Beth Israel Methadone Maintenance Program. There was testimony at his disciplinary hearing by the Medical Director of the St. Claire program that he had an excellent record, had never failed to come in to get his methadone as scheduled, and did not use drugs other than methadone. (PX 4, p. 27.)

Plaintiff Reyes has been employed by the Mt. Sinai Methadone Maintenance Program as a social health advocate from January 17, 1972 to date. In this position, Reyes' duties include acting as a liaison between participants in the program and social workers, and directly assisting in the resolution of employment, family, legal, housing and welfare benefit problems encountered by participants. Reyes has performed these duties in an entirely competent manner at all times.

Notwithstanding his excellent employment record, plaintiff Reyes has earned considerably less in the past three years than he would have had he remained in the TA's employ.]

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IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5307 (T.P.G.)

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CARL A. BEAZER, *et al.*,

*Plaintiffs,*

—against—

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

*Defendants.*

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UPDATE TO FEBRUARY 7, 1975 OF PLAINTIFFS' EXHIBIT 31—COMPILATION OF THE AGREED TO AND CONTESTED FACTS TOGETHER WITH PLAINTIFFS' SUBMISSIONS REGARDING DOCUMENTATION CONTAINED IN THE RECORD

## I. Proceedings to Date

Exhibit 31 was submitted by plaintiffs at the commencement of the trial of this action. The position of the other parties was indicated and certain changes were agreed to during the discussion of the document at pp. 126 *et seq.* of the transcript dated October 22, 1974. Since that date, other changes have been agreed upon among counsel. The following represents a "pocket part" to the original document, updating that document to February 6, 1975.

*Compilation of the Agreed to and Contested Facts*

II. Position of the Defendants

A. The City Defendants

The City Defendants have, to the extent of their knowledge, agreed to the facts set forth by plaintiffs in the entire document, with certain modifications and additions set forth below.

B. The Transit Authority Defendants

The Transit Authority defendants have agreed only to those facts which it is indicated they agree to in the document, with certain modifications and additions as set forth below.

III. Modifications and Additions

1. *The Class* (p. 2) At the conference held in chambers on January 23, 1975, it was agreed that the class definition ordered by the Court in July of 1973 would be adhered to. Thus the class of plaintiffs consists of:

A. All those persons who have been dismissed from employment by the TA or MaBSTOA, or would in the future be subject to dismissal, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

B. All those persons whose applications for employment with the TA or MaBSTOA have been rejected, or would in the future be subject to rejection, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;



*Compilation of the Agreed to and Contested Facts*

C. All those persons who have been or will in the future be deterred from applying for employment with the TA or MaBSTOA by the TA's and MaBSTOA's policy of excluding from such employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs.

2. *Page 8.* The T.A. has further admitted:

"The medical director has not ever given permission to an employee to use methadone."

3. *No. 16, Page 15.* The T.A. now admits:

"The Transit Authority drug policies apply to all positions in the Transit Authority."

4. *No. 24, Page 31.* Counsel for plaintiffs and the city defendants have agreed to change the last paragraph to read:

"Accordingly, 'drug free former addicts' and persons 'successfully participating in recognized chemotherapeutic treatment programs' such as methadone maintenance are fully eligible for employment in virtually all positions in the mayoral agencies . . ."

5. *Page 54.* Counsel for plaintiffs and the city defendants have agreed to the following modification 2nd indented paragraph: add "by the Department of Personnel" after "conducted."

3rd indented paragraph: delete last sentence.

*Compilation of the Agreed to and Contested Facts*

6. *No. 46, Page 58.* The T.A. has further admitted:

"In fact whenever a reassignment [to a light duty position] was indicated medically, such was able to be made."

7. *No. 71(a), Page 76.* Counsel for all parties now agree that:

"If called, Dr. Trigg, Director of the Beth Israel Methadone Maintenance Treatment Program, would testify to the data set forth in paragraph 71(a)."

*No. 71(b).* Counsel for all parties now agree that: the reference works cited contain the statistics set forth in paragraph 71(b).

*No. 71(c).* Counsel for all parties now agree that:

"If called, Peter Vogelson, a responsible official of the Rockefeller University Methadone Information Center would testify to the statistics set forth in paragraph 71(c)."

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**Order Granting Petition for Writ of Certiorari**

CERTIORARI GRANTED

77-1427 NY City Transit Authority v. Beazer. The petition for a writ of certiorari is granted limited to questions 3 and 4 presented by the petition. —— US ——, 46 USLW 3792 (1978).